APPENDIX A

UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS,
EASTERN DIVISION

No. 03 C 5761

VISION CHURCH,
Plaintiff-Appellant,

v.

VILLAGE OF LONG GROVE,
Defendant-Appellee.

October 17, 2005, Decided
October 18, 2005, Filed

AMENDED OPINION AND ORDER

CHARLES R. NORGLE, Sr., District Judge

Before the court is Defendant's Motion for Summary Judgment brought pursuant to *Federal Rule of Civil Procedure 56(c)*. For the following reasons, Defendant's Motion for Summary Judgment is granted.

I. BACKGROUND[1]

A. Facts

The voluminous record in this case arises out of a dispute between Plaintiff Vision Church ("Vision") and the Village of Long Grove (the "Village") over the development of real property. The Village of Long Grove is located on 18 square miles in Lake County, Illinois, and has a population of approximately 6,735. See http://www.longgrove.net (visited 9/30/2005).

Vision is an Illinois not-for-profit religious organization, with its principal place of business in Mundelein, Illinois. According to Vision, the church's congregation is composed of Americans of Korean decent. As of December 2000, Vision asserted that its then -- current congregation consisted of 140 adults and 80 youths and children. Vision estimated that by 2010, the congregation would grow to 1,000 adults and 500 children. Vision is a local church of United Methodist ("Methodist"), one of more than 30,000 other local churches.

Under Methodist ecclesiastical laws, the Northern Illinois Conference of the United Methodist Church (the "Conference") is the basic unit that connects Methodist to this geographical region. According to its website, Methodist has 34,892 local churches, comprised of 8,186,275 lay members, and 45,176 clergy members. See http://archives.umc.org. (visited 10/17/2005). Methodist's legislative branch is called the General Conference. General agencies within Methodist are primarily accountable to the General Conference. Each local church in the United States and Puerto Rico is part of a district, an

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[1] The court takes the undisputed facts from the parties' Local *Rule 56.1* Statements, and notes disputed facts within the text.

administrative and program grouping of 40-80 churches with a full-time superintendent. Districts are grouped into annual conferences, regional bodies that meet yearly for legislative purposes. Annual conferences approve the budget, elect delegates to General and Jurisdictional conferences, and examine and recommend candidates for ministry. Five geographic divisions in the United States include 8-13 annual conferences each. Jurisdictional conferences meet simultaneously every four years to elect and assign bishops and some members of general church agencies, and, in some cases, to develop jurisdictional programs. Each local church is governed by a charge conference with an administrative board as the year-round supervisor. A council on ministries coordinates the program of the congregation. In smaller churches, the board and the council are combined. See *id.*

1. Vision's 2001 Annexation Petition

In 1999, the Village Board of Trustees adopted and ratified a Comprehensive Plan which established certain fundamental goals and policies for land use within the Village limits. According to the Comprehensive Plan, essential to the Village's planning goals are the provisions for a quiet countryside, with an unhurried and unstructured environment where families can live in and enjoy open space. The Village has used the Comprehensive Plan as a guideline when it drafted its Zoning Code, and in make various zoning decisions, such as the approval of annexations and residential developments.

Also in 1999, Vision, which was then located in Park Ridge, began to look for a new site to build its church complex. Initially, Vision sought a 10 acre parcel of land. When it was unable to locate a tract suitable for its use, Vision entered into an agreement on July 29, 1999 to purchase a 27.4 acre vacant piece of land located in unincorporated Lake County. The contract contained a "zoning contingency clause," which enabled Vision to terminate the contract if it did not obtain zoning approval from

Lake County within 180 days (January 2000) of entering into the agreement. In October 1999, upon Vision's request, the sellers agreed to amend the zoning contingency, and extended the termination date until May 31, 2000.

In June 2000, Vision filed an application for voluntary annexation with the Village pursuant to *65 ILL. COMP. STAT. 5/7-1-8*. The application was conditioned on two results: that the Village (1) zone the property Residential, and (2) grant Vision a Special Use Permit. Vision's proposal included a 99,000 square-foot complex of five buildings, including a 1,000 seat sanctuary, and several smaller buildings.

Because Vision did not file its annexation petition by May 31, 2000, it did not exercise the termination clause under the contract. In September 2000, Vision eventually closed on the purchase of the property. As of that date, Vision had not applied to Lake County for approval to build a church complex on the property, and its voluntary annexation petition with the Village had not been granted. At the time of the closing, the 27.4 acre property was thus not located within the village limits, and as a result, the Village did not have the authority to zone the land or take action on any development plan under the Village's Zoning Code.

Consistent with the 1999 Comprehensive Plan, in June 2000, the land within the Village was divided into residential, business, office and research, and open space districts. Within these districts, the Zoning Code provided for Planned Unit Developments ("PUDs") as special uses. The majority of the Village is zoned either residential or approved PUD. Churches were classified as a "special use." In order to obtain approval as a "special use" an applicant must: (1) be in a zoning district where the use was allowed as a special use (i.e., churches in a residential district), and (2) meet the standards set forth in the Zoning Code. The specific standards in the Zoning Code did

not specify any minimum or maximum square foot requirement for a proposed building.

Special Use applications are initially brought before the Village Plan Commission. The Plan Commission is an advisory board that is responsible for conducting hearings and making recommendations in regard to certain land use decisions, including Special Use applications. After a public hearing, the Plan Commission makes a recommendation on the Special Use application to the Board. The Board has the final approval of a Special Use Application.

In March 2001, after lengthy negotiations, Vision presented the Village a revised proposal, seeking a 59,000 square-foot complex with three main buildings, including a 600 seat sanctuary, an administration building, and a Sunday school building. Then, on April 3, 2001, at a Plan Commission meeting, Vision orally agreed to various predevelopment conditions on their parcel. At the end of the April 3 meeting, the Village claims that the Plan Commission wanted more information on Vision's plan, and asked the church to submit a revised set of drawings that would: (1) reflect revisions consistent with the changes Vision agreed to, and (2) provide more detail regarding Vision's proposal. According to the Village, Vision never provided the Plan Commission with these materials. Vision, on the other hand, contends that the Plan Commission never requested a set of revised drawings.

On July 6, 2001, Vision's counsel informed the Village that Vision had chosen to rest on its application as presently submitted, and requested a vote on the pending application for annexation. Granting the request, a vote was scheduled on Vision's annexation petition for August 7, 2001. According to the Village, on August 6, Vision's counsel rejected several of the proposed conditions set forth by the Village, including the Village's request that Vision promise no future expansion if the Village approved a 59,000 square-foot facility. Such a restriction on growth is known as a conservancy easement. The next

day, the Plan Commission recommended the denial of Vision's application. Vision alleges that it agreed to limit future expansion, but did not want a conservancy easement because it wanted to reserve certain open space on the property as a play area for children. On August 14, the Board voted to accept the Plan Commission's recommendation, and formally declined to voluntarily annex the property.

2. The Valenti Property

In May 2001, Joseph Valenti ("Valenti"), a developer who owned land adjacent to Vision's parcel filed an application to have his 120-acre property annexed to the Village and approved as a residential PUD. On August 7, 2001, the same day as Vision's public hearing, the Plan Commission conducted a public hearing on Valenti's property. Then, at the September 4, 2001 meeting, the Plan Commission voted to recommend the voluntary annexation of the Valenti Property. On September 25, 2001, the Board voted 4-3 to approve the Valenti PUD, and on October 9, approved the annexation of the Valenti Property. As a result of this annexation, Vision's property became completely surrounded by land located within the Village boundaries. Under Illinois law, the Village could then involuntarily annex Vision's property without having to accept the conditions of rezoning and a special use permit that Vision had insisted upon when it sought voluntary annexation. See *65 ILL. COMP. STAT. 5/7-1-13.* Eventually, on October 23, 2001, the Village involuntarily annexed Vision's property. At the time the Village annexed the property, it was aware that Vision had applied to Lake County for approval of a plan. This County plan was bigger than Vision's March 2001 plan, which the Village rejected: the 59,000 square foot complex contained three main buildings and other smaller buildings.

According to the Village, the Valenti Property was annexed because Valenti's voluntary annexation petition and PUD proposal complied with the Village's zoning or-

dinance, land use goals and objectives set forth in the Comprehensive Plan. However, Vision claims that the Village rushed to annex the Valenti Property in order to involuntary annex Vision's land, and subject the church to the Village's zoning rules. Valenti's application was filed in May 2001, and approved by the Board in October, 2001. Vision does not claim any procedural improprieties.

3. The Public Assembly Ordinance and Denial of Vision's 2002 Application

In November 2001, Village Manager Cal Doughty ("Doughty") recommended to the Village Board that it consider a comprehensive amendment, the "Public Assembly Ordinance," to the Village Zoning Code for the location of, and standards for, "Public Assembly Uses," such as religious institutions, private schools, meeting halls, and clubs. On November 12, an initial draft of this Ordinance was presented to the Village President and Board. The Village contends that the Ordinance applies to all public assembly uses regardless of their religious or secular nature, and regardless of the speech conducted within these buildings. On April 9, 2002, the Board voted to enact the Ordinance.

As enacted, the Ordinance regulates the maximum number of square feet for public assembly buildings, and the maximum total volume of these buildings. See Am. Compl., Ex. F. The maximum square-footage and volume is dependant upon the size of the land on which the project is located, and the type of roadway it fronts. For example, public use buildings may only front state highways. *Id.* The Village asserts that this correlation between highway access and building size is based upon the planning principle that a state highway can accommodate more cars, people, and a larger complex. Vision, however, asserts that in the Village there is no rational distinction between State of Illinois and Lake County roads for purposes of servicing public facilities.

On January 23, 2002, two months after the Public Assembly Ordinance was proposed and under consideration by the Village, Vision applied for a special use permit to allow construction of a church complex on their property. In response to an inquiry made by the Village Manager regarding the new proposal, Vision's counsel stated that Vision was unwilling to restrict the use of certain open areas, and future construction on the site. On June 18, 2002, Vision presented a plan for an 80,000 square-foot proposal, but asked the Plan Commission to vote on the 99,000 square-foot plan. The Plan Commission recommended that the Board deny the application, and the Board accepted the recommendation and formally denied the special use application. Vision's 2002 application did not comply with the criteria set forth in the Public Assembly Ordinance, which required a complex like Vision's to have a maximum area of 55,000 square-feet. The Village claims that their denial of the special use application was not based on religion, but solely because Vision did not comply with the Public Assembly Ordinance. As of this date, Vision has not built a church complex on its property.

B. Procedural History

The Plaintiffs did not seek relief in the state court of the denial of its Special Use Application. In the federal court, Vision filed its original Complaint on August 18, 2003, and its Amended Complaint on January 14, 2005, alleging, *inter alia*, violations of the *Free Exercise* and *Establishment Clauses of the First Amendment*, the *Equal Protection Clause of the Fourteenth Amendment*, and violations of the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

According to Methodist, Vision is one of Methodist's member congregations, and Bishop Sprague is the presiding official of the Conference and the episcopal authority whose responsibility it is to superintend the pastors and

ministries of all local churches. Methodist coordinates the work of all local churches within their geographic boundaries and is responsible for the ordination, character, fitness, and supervision of all clergy in the area. The real estate at issue in this case is held subject to a trust clause in favor of the Conference and the larger denomination and is also subject to reversionary rights in favor of the Conference. Therefore, even if a local church is discontinued or abandoned, the property will be held in trust for the benefit of the larger church.

Methodist describes the nature of their interests in this action as follows. Methodist ecclesiastical laws and tenets are set forth in the Methodist Constitution and the Book of Discipline. Pursuant to the Book of Discipline, the annual Conference is constructed as a beneficial trust. The Conference, through its Board of Trustees, is also instrumental in safeguarding trust property, if necessary, by appropriate legal action. The Conference provides certain financial assistance to its local churches, but also, is financially dependent on such churches to fund its administrative budget and ministries. The local church's support is derived from remittances called "apportionments" from each local church to the Conference Treasurer to fund religious outreach activities and staffing costs. Therefore Methodist moved to intervene to address the issues and protect its interest as they may appear. See *Vision Church v. Long Grove, No. 03-5761, 2004 U.S. Dist. LEXIS 5724 (N.D. Ill. April 6, 2004)* (granting the Motion). Vision, however, alleges no discrimination against Methodist by the Village.

On February 8, 2005, the court denied Vision's Motion to Compel the depositions of various Village managers. See *Vision Church v. Vil. of Long Grove, 226 F.R.D 323 (N.D. Ill. 2005)*. Then, on March 9, the Village and Vision filed cross Motions for Summary Judgment. Vision seeks Summary Judgment on Counts 1, 2, 4, 5, 6, 8, 10, and 11, and the Village seeks summary judgment on the entire

Complaint. Both parties filed their Responses on June 8, 2005, and Replies on July 15, 2005. The Village's Motion for Summary Judgment is fully briefed and before the court.

II. DISCUSSION

A. Standard of Review

Summary judgment is permissible when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." *FED. R. CIV. P. 56(c).* The nonmoving party cannot rest on the pleadings alone, but must identify specific facts, see *Heft v. Moore, 351 F.3d 278, 283 (7th Cir. 2003),* that raise more than a mere scintilla of evidence to show a genuine triable issue of material fact. See *Szymanski v. Rite-Way Lawn Maintenance Co., 231 F.3d 360, 364 (7th Cir. 2000);* see also *Vukadinovich v. Bd. of Sch. Tr.'s of North Newton School, 278 F.3d 693, 699 (7th Cir. 2002).*

In deciding a motion for summary judgment, the court can only consider evidence that would be admissible at trial under the Federal Rules of Evidence. See *Stinnett v. Iron Works Gym/Executive Health Spa, Inc., 301 F.3d 610, 613 (7th Cir. 2002).* The court views the record and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. See *FED. R. CIV. P. 56(c);* see also *Koszola v. Bd. of Educ. of City of Chicago, 385 F.3d 1104, 1108 (7th Cir. 2004).* "In the light most favorable" simply means that summary judgment is not appropriate if the court must make "a choice of inferences." See *United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962);* see also *First Nat'l Bank of Ariz. v. Cities Service Co., 391 U.S. 253, 280, 88 S. Ct. 1575, 20 L. Ed. 2d 569 (1968); Spiegla v. Hull, 371 F.3d 928, 935 (7th Cir. 2004).* The choice between reasonable inferences from facts is a jury function. See *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).*

When a party moves for summary judgment, the court must view the record and all inferences in a light most favorable to the non-moving party. *Ameritech Benefit Plan Comm. v. Communication Workers of Am., 220 F.3d 814, 821 (7th Cir. 2000).* However, the inferences construed in the non-moving party's favor must be drawn from specific facts identified in the record that support that party's position. See *Szymanski, 231 F.3d at 364.* Under this standard, "conclusory allegations alone cannot defeat a motion for summary judgment." *Thomas v. Christ Hospital and Medical Center, 328 F.3d. 890, 892-93 (7th Cir. 2003)* (citing *Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 888-89, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)).*

B. Vision's *First Amendment* Claims[2]

1. Vision's Establishment Clause Claim

The first clause of the *First Amendment to the Constitution* provides that "Congress shall make no law respecting an establishment of religion." *CONST. AMEND. 1.* This is commonly known as the *Establishment Clause.* The *Establishment Clause* requires the government to remain neutral with respect to religion, religious beliefs, and practice. "When the government acts with the ostensible and predominant purpose of advancing religion, it violates the central *Establishment Clause* value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides." *McCreary County, Kentucky v. Amer. Civil Liberties Union of Kentucky, 125 S. Ct. 2722, 2733, 162 L. Ed. 2d 729 (2005).* The *Establishment Clause* "prohibits government from

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[2] Count VII is styled "*First Amendment*: Exclusion." There is no "exclusion" clause in the *First Amendment*, and therefore the court grants summary judgment on this Count.

appearing to take a position on questions of religious belief or from making adherence to a religion relevant in any way to a person's standing in the political community.'" *County of Allegheny v. Am. Civil Liberties Union, 492 U.S. 573, 594, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989)* (quoting *Lynch v. Donnelly, 465 U.S. 668, 687, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984)).* The Supreme Court has stated that the *Establishment Clause* means "that government may not promote or affiliate itself with any religious doctrine or organization, may not discriminate among persons on the basis of their religious beliefs and practices, may not delegate a governmental power to a religious institution, and may not involve itself too deeply in such an institution's affairs." *Id. at 590-91.*

When a court considers "whether a state action violates the *Establishment Clause* it must consider: (1) whether the government activity in question has a secular purpose, (2) whether the activity's primary effect advances or inhibits religion, and (3) whether the government activity fosters an excessive entanglement with religion." *Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971); Mercier v. Fraternal Order of Eagles, 395 F.3d 693, 704 (7th Cir. 2005)* (quoting *Books v. City of Elkhart, 235 F.3d 292, 301 (7th Cir. 2000)).* Furthermore, "the Supreme Court has emphasized the case-by-case nature of a court's review of an alleged *Establishment Clause* violation." *Id. at 702* (citing *Santa Fe Ind. Sch. Dist. v. Doe, 530 U.S. 290, 315, 120 S. Ct. 2266, 147 L. Ed. 2d 295 (2000)*; see *Van Orden v. Perry, 125 S. Ct. 2854, 2860, 162 L. Ed. 2d 607 (2005)* (pointing out that the Court has selectively applied the Lemon test to *Establishment Clause* claims over the past 25 years)). At it's very core, the *Establishment Clause* requires that government remain neutral towards religion. *Id.* (citing *Cutter v. Wilkinson, 544 U.S. 709, 125 S. Ct. 2113, 2121, 161 L. Ed. 2d 1020 (2005)).* With these principles in mind, we turn to Vision's *Establishment Clause* claim.

First, there is no genuine issue of material fact as to whether the Village's Public Assembly Ordinance has a secular purpose. See *Lemon, 403 U.S. at 612.* The Ordinance is secular in purpose because it merely controls development, and not Vision's religious activities. While the Village's stated purpose for the Ordinance is to enforce zoning regulations, Vision does not offer evidence to rebut the Village's claim that its intent to enact the statute was driven by religious animus. The mere temporal proximity between Vision's involuntary annexation and the passage of the Public Assembly Ordinance does not create a genuine issue of material fact as to the Village's intent for enacting the law. "Although a legislature's stated reasons will generally get deference, the secular purpose required has to be genuine, not a sham, and not merely secondary to a religious objective." *McCreary County, 125 S. Ct. at 2735.* There is no evidence in the record to suggest that the Village, through the enactment of the Public Assembly Ordinance, has endorsed a specific religion, that the Village's stated reasons are disingenuous, or give the impression that one religion is favored or preferred. See *County of Allegheny, 492 U.S. at 593.*

Second, the primary effect of the Ordinance is to regulate where and how certain public use facilities may be constructed in the Village. It neither advances one religion, nor inhibits Vision's members from practicing theirs. There are no religious overtones to the Ordinance. Third, there is no genuine issue of material fact as to whether there is excessive entanglement between the government and religion as a result of this Ordinance. The Village is not involved in every step of the building process, nor are there any regulations on religious activity. According to the Village, the goal of the Ordinance was to "advance its zoning and land use goals, not to inhibit the practice of religion in the Village." Def.'s Mot. for Summ. J., at 21.

There is no evidence in the record to suggest that the Village has affiliated itself with one religion, and thereby

taking sides against Vision. See *County of Allegheny, 492 U.S. at 593.* In fact, the Public Assembly Ordinance is generally applicable to all religious and nonreligious entities. The Ordinance effects all groups, regardless of religious or political affiliation. See *Lemon, 403 U.S. at 612.* The Public Assembly Ordinance has a secular purpose, it neither advance or inhibits one religion at the expense of another, nor does the Ordinance create excessive entanglement between the Village and Vision. As a result, there is no genuine issue of material fact as to whether the Village, through the passage of the Public Assembly Ordinance, has violated the *Establishment Clause*, and summary judgment is therefore appropriate for the Village as to Vision's *Establishment Clause* claim. See *Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 765-766 (7th Cir. 2003)* (generally applicable zoning ordinance did not violate *First Amendment*, where regulation was motivated by legitimate considerations involving land use and placed churches on equal footing with nonreligious assembly uses).

2. Vision's Free Exercise Claim

The second clause of the *First Amendment* provides that "Congress shall make no law . . . which prohibits the free exercise of religion." *CONST. AMEND. 1.* "The protections of the *Free Exercise Clause* pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 532, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).* Government action "that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Id.* "The *Free Exercise Clause* protects against governmental hostility which is masked, as well as overt." *Id.*; see *McCreary County, 125 S. Ct. at 2735; U.S. v. Indianapolis Baptist Temple, 224 F.3d 627, 629 (7th Cir. 2000).* "The *Free Exercise Clause* . . . does not afford an

individual the right to dictate the conduct of the Government's internal procedures." *Johanns v. Livestock Marketing Ass'n, 544 U.S. 550, 125 S. Ct. 2055, 2064, 161 L. Ed. 2d 896 (2005)* (quoting *Bowen v. Roy, 476 U.S. 693, 700, 106 S. Ct. 2147, 90 L. Ed. 2d 735 (1986)).*

"The touchstone for our analysis is the principle that the *First Amendment* mandates governmental neutrality between religion and religion, and religion and nonreligion." *Id.* (quoting *Epperson v. Arkansas, 393 U.S. 97, 104, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968)).* The Seventh Circuit instructs us that "in the context of the *Free Exercise Clause,* [plaintiff] must first establish that his right to practice [religion] was burdened in a significant way." *Kaufman v. McCaughtry, 419 F.3d 678, 683 (7th Cir. 2005).* With these principles in mind, we turn to Vision's Free Exercise Claim.

Under a Free Exercise analysis, Vision's right to practice religion has not been significantly burdened. See *Kaufman, 419 F.3d at 683.* While a governmental body is afforded great deference in their zoning regulations, they cannot cloak themselves in the shroud of legitimacy to discriminate on the basis of religion, and avoid constitutional scrutiny. The Village must be mindful that the "*First Amendment* mandates governmental neutrality between religion and religion, and religion and nonreligion." *Kaufman, 419 F.3d at 683.* Here, the only prohibition imposed on Vision is a restriction on the physical size of the proposed buildings. There is no restriction on Vision's beliefs or customs. The Village is not required to abandon its zoning regulations and growth concerns to satisfy a single religious entity's desire for unmitigated development, any more than Vision can "dictate a Government's internal procedures." *Johanns, 125 S. Ct. at 2064.*

It is reasonable to say that a church with a congregation of 140 adults and 80 children is not "significantly burdened" in this case for purposes of the *First Amend-*

ment. See *Kaufman, 419 F.3d at 683.* A church that is 55,000 square feet has ample space to house a congregation of 140 adults and 80 children comfortably. This is not a situation where the Village has restricted Vision to a one room building where all the members must stand shoulder to shoulder in order to pray. The maximum square footage allowed by the Village does not constitute a significant burden on religion for *First Amendment* purposes.

Additionally, the court notes that the Village has remained neutral as to all religious groups within its borders. The Public Assembly Ordinance does not distinguish between religions, it merely classifies between neighborhood, community, and regional facilities. See Am. Compl., Ex. F. "The minimum requirement of neutrality is that a law not discriminate on its face." *Church of Lukumi Babalu Aye, 508 U.S. at 533.* Here, the Village has satisfied this requirement, and not run afoul of the *First Amendment.* There are no words with religious meanings, such as "sacrifice," and "ritual" that would make the Ordinance fail the test of neutrality. See *id.* As noted previously, the Village has in no way prohibited Vision from practicing its religion. It has only restricted the size and structure of its physical house of worship. Such a restriction is fully within the right of a municipality. See *Civil Liberties for Urban Believers, 342 F.3d at 761.* Generally speaking, "a zoning ordinance imposing restrictions in respect of the use and occupation of private lands in urban communities' such as the segregation of residential, business, and industrial buildings' satisfies the rational basis tests as a valid exercise of authority.'" *Id. at 766.* Therefore, Vision has not introduced any evidence as to the Village's intent, or that it has not remained neutral as to Vision's religious beliefs. As a result, summary judgment is appropriate for the Village as to Vision's Free Exercise claim. See *id.*

C. Vision's RLUIPA Claims

1. Vision has not suffered a "substantial burden" for purposes of the RLUIPA

The RLUIPA states, in part:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution --
>
> > (A) is in furtherance of a compelling governmental interest; and
> >
> > (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). The Act "defines religious exercise' to include any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'" *Cutter, 125 S. Ct. at 2118* (citing *§ 2000cc-5(7)(A)*). The RLUIPA "was passed after the Supreme Court's decision in *City of Boerne v. Flores, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997),* which invalidated the Religious Freedom Restoration Act ("RFRA") of 1993." *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895, 897 (7th Cir. 2005).* "The drafters of the RLUIPA sought to avoid RFRA's fate by limiting the scope of the new Act to (1) state regulations (statutory or administrative) that affect commerce, (2) programs that receive federal financial assistance, and (3)

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programs under which the agency makes individualized assessments of the proposed uses for the property involved.'" *Id.* Furthermore, "the RLUIPA is not unconstitutional on its face, in all possible applications." *Id.* (citing *Charles v. Verhagen, 348 F.3d 601, 610-11 (7th Cir. 2003)).* The RLUIPA "forbids government to impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non religious assembly or institution.'" Id (quoting *42 U.S.C. § 2000cc(b)(1)*). "The substantial burden provision . . . must mean something different from great burden than imposed on secular institutions." *Id.* Finally, if a "land-use decision . . . imposes a substantial burden on religious exercise . . . and the decision maker cannot justify it, the inference arises that hostility to religion, or more likely to a particular sect, influenced the decision." *Id.*

The Village admits that the RLUIPA is applicable to the denial of Vision's 2002 Special Use application. However, Vision did not incur a "substantial burden" for purposes of the RLUIPA. Under the Village's Public Assembly Ordinance, Vision would have been able to build a 55,000 square-foot facility on the property. Ultimately, it was Vision, not the Village that made the final determination not to build the church and surrounding buildings. Vision refused to comply with the Village's zoning standards, and failed to submit an application that complied with the Public Assembly Ordinance. The RLUIPA does not guarantee that a religious organization may build a complex as large as that organization desires. A municipality can control growth and expansion within its city limits. Limiting Vision's development did not "substantially burden" the church in the practice of its religion. It simply placed limitations on the size of a church that could be built on the 27.4 acre parcel.

Vision alleges that it was "substantially burdened" within the meaning of the RLUIPA when the Village ex-

ercised its discretion to impose over fifty conditions on Vision. Specifically, Vision claims it has paid over half a million dollars in fees and expenses during the Special Use application process. Vision argues the actions undertaken by the Village were done to frustrate the proposed development of the church complex.

However, Vision has not shown how a congregation of 140 adults and 80 children are substantially burdened by having a 55,000 square-foot facility, instead of the requested 99,000 square foot complex. "Application of the substantial burden provision to a regulation inhibiting or constraining *any* religious exercise, including the use of property for religious purposes, would render meaningless the word substantial,' because the slightest obstacle to religious exercise incidental to the regulation of land use -- however minor the burden it were to impose -- could then constitute a burden sufficient to trigger RLUIPA's requirement that the regulation advance a compelling governmental interest by the least restrictive means." *Civil Liberties for Urban Believers, 342 F.3d at 761.* The Village's Public Assembly Ordinance is only an obstacle for Vision in terms of the physical size of the church, not an obstacle to their religious exercise.

For purposes of the RLUIPA, "a land use regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise-including the use of real property . . . impracticable." *Id.* Vision has not established a genuine issue of material fact as to how the church is substantially burdened because it cannot build a 99,000 square-foot facility, or that the Village's ordinance rendered any religious exercise on the property effectively impracticable. If Vision had complied with the 55,0000 square-foot requirement, there might be a church complex today. That Vision paid substantial fees and expenses, or was subjected to the same ordinance as other developers who wish to build in the

Village, does not create a substantial burden for Vision. Presumably, other landowners who go before the Plan Commission spend money on attorneys' fees and other costs related to their petition. While Vision is not required to prove their case at the summary judgment stage, it must submit some evidence that creates a genuine issue of material fact, and because this was not done, summary judgment is appropriate for the Village as to Vision's claim under *§ (a)(1)* of the RLUIPA. See *E.E.O.C. v. Sears, Roebuck & Co., 417 F.3d 789, 792 (7th Cir. 2005).*

2. Vision has been treated on equal terms with non-religious entities

Section 2(b)(1) of the RLUIPA provides, in part, "No government shall impose or implement a land use regulation in a manner that treats a religious assembly use or institution on less than equal terms with a nonreligious assembly or institution." *42 U.S.C. § 2000cc(2)(b)(1).* Moreover, *§ 2(b)(3)(A)* states that no government shall impose a land regulation that "totally excludes religious assemblies from a jurisdiction." *42 U.S.C. § 2000cc2(b)(3)(A).* Vision, however, has not identified a non-religious group that has received more favorable treatment. In fact, the Village is currently in litigation with another petitioner, a private school, who failed to comply with the Public Assembly Ordinance.[3] Additionally, the Public Assembly Ordinance did effect existing churches within the Village, as a result of the 11,000 square feet maximum space requirement for neighborhood public assembly uses. After the passage of the Ordinance, several of the existing churches in the Village were non-conforming. See Def.'s Resp. to Pl.'s Amend.

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[3] That case, Montessori Peace School, et al v. Village of Long Grove, is currently in the circuit court of Lake County. Case No. 04 CH 525.

Stmt. of Mat. Facts, P 60; Def.'s Stmt. of Mat. Facts, P 82. Therefore, for purposes of the RLUIPA, the Village has demonstrated that it does not apply the Ordinance only to religious institutions, but evenly to all petitioners that come before the Plan Commission.

Furthermore, the public school that Vision claims was excluded from the Ordinance was built in 1999, before the Public Assembly Ordinance was enacted. "The Government, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated.'" *Jacobsen v. Ill. Dep't of Transportation, 419 F.3d 642, 647 (7th Cir. 2005).* As a result, Vision cannot show a genuine issue material fact as to a violation of *§ 2000cc2(b)(3)(A),* and summary judgment is proper for the Village on Vision's RLUIPA Equal Protection Claims.

D. *Fourteenth Amendment*: Equal Protection Claim

Vision also claims that the Village violated the *Equal Protection Clause of the Fourteenth Amendment* when it passed the Public Assembly Ordinance. It is the established law in the Seventh Circuit that "absent a fundamental right or a suspect class, to demonstrate a viable equal protection claim in the land use context, a plaintiff must demonstrate governmental action wholly impossible to relate to legitimate governmental objectives." See *Civil Liberties for Urban Believers, 342 F.3d at 766.* Furthermore, "unless a statute classifies by race, alienage, or national rights, the general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.'" *Id.* (quoting *City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985)).*

The first step in any *Equal Protection Clause* analysis is to identify whether the government has classified different groups, i.e, drawn a distinction among people. See

Personnel Adminstrator of Mass. v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979). Second, once the classification has been identified, the next step is to identify the level of scrutiny applied to the law. See *Martin v. Shawano-Gresham Sch. Dist., 295 F.3d 701, 712 (7th Cir. 2002).* "Typically, an equal protection claim focuses on the denial of a fundamental right or disparate treatment of persons depending on the claimant's suspect classification." *Id.* These claims are examined under a more exacting strict scrutiny test, while other equal protection claims are examined under the deferential rational basis test. *Id.*

The Public Assembly Ordinance does not classify on the basis of race, gender, or national origin. Nor does it classify on the basis of religion. The only distinction made in the Ordinance is between public assembly and private locations. See Am. Compl., Ex. F. Governments have wide discretion in the enactment of legislation that furthers economic growth of the community. "Social and economic legislation . . . that does not employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the legislative means are rationally related to a legitimate government purpose." *Hodel v. Indiana, 452 U.S. 314, 331-32, 101 S. Ct. 2376, 69 L. Ed. 2d 40 (1981).*

Although Long Grove's Ordinances are facially valid, laws valid on their face may still violate the Constitution in their application. In the seminal case of Yick Wo v. Hopkins, Justice Matthews wrote,

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circum-

> stances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

118 U.S. 356, 373-74, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

Vision asserts that the manner in which Long Grove has applied its Ordinances to Vision has resulted in Vision being treated differently from other similarly situated entities in Long Grove, and that Long Grove has no rational basis to explain this different treatment. Amended Compl., PP 28-32. Put another way, Vision's assertion is that it is a "class of one" whose Equal Protection rights under the United States Constitution have been violated. "The Supreme Court . . . declared that class of one equal protection claims are valid where the plaintiff alleges that she has been intentionally treated differently than others similarly situated and that there is no rational basis for the difference in treatment.'" *Olech v. Village of Willowbrook, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000)).*

To establish a prima facie case of "class of one" discrimination, Vision must "present evidence that [Long Grove] deliberately sought to deprive [Vision] of the equal protection of the laws for reasons of a personal nature unrelated to the duties of [Long Grove's] position." *Hilton v. City of Wheeling, 209 F.3d 1005, 1008 (7th Cir. 2000).* Specifically, Vision must show that they were: "(1) intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment," or (2) "that the government is treating unequally those individuals who are prima facie identical in all relevant respects, and that the cause of the differential treatment is a totally illegitimate animus toward the plaintiff by the defendant." *Nevel v. Vill. of Schaumburg, 297 F.3d 673, 681 (7th Cir. 2002).*

First, Vision has submitted no evidence that could suggest that the Village treated it differently from other

similarly situation institutions. In fact, Vision cannot show that others similarly situated as Vision have received preferential treatment. Vision merely claims that bar, restaurants, and taverns are not subjected to the Public Assembly Ordinance. See Am. Compl., P 41. However, these uses were only allowed in the Village's business district, as opposed to the Residential district where Vision wishes to build. Second, there is no evidence that demonstrates that the government is treating other individuals who are virtually identical to Vision in a more lenient matter. See *id.* The evidence Vision has submitted is that it was denied a zoning permit to build a 56,000 square foot facility. There is nothing to indicate that the Village intentionally treated Vision different from others, or that the Village's actions are wholly unrelated to a legitimate governmental objective. See *Civil Liberties for Urban Believers, 342 F.3d at 766*; see also *Olech, 528 U.S. at 564.* Vision was treated the same under the Ordinance as any other developer who would appear before the Plan Commission.

The Public Assembly Ordinance at issue in this case is equally applicable to all public assembly places, and does not discriminate against one group, as opposed to another. The Ordinance is rationally related to the stated government objectives. Specifically, the Village's stated planning goals are for a quiet countryside, with an unhurried environment where families can enjoy the open space. The Public Assembly Ordinance furthers that goal by limiting the size of certain buildings operated for public use, and through the designation of which facilities may be located on specific county or state highways. See Am. Compl., Ex. F. When an ordinance is facially neutral and generally applicable, as the Public Assembly Ordinance is here, the rational basis test is applied. See *Civil Liberties for Urban Believers, 342 F.3d at 766.* Strict scrutiny is reserved for statutes which deny a fundamental right or make distinctions among suspect classes, such as religion, race, or national origin. See *Richmond v. J.A.*

Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989); see also *Metro Broadcasting, Inc. v. F.C.C., 497 U.S. 547, 110 S. Ct. 2997, 111 L. Ed. 2d 445 (1990).*

Vision has failed to establish a genuine issue of material fact as to whether they are being treated differently from others similarly situated. In its Amended Complaint, Vision claims that six churches in the Village have similar, or higher seating capacity per acre than Vision's proposed maximum density of 36 persons per acre. For example, out of the six diverse religious institutions within the Village, four of them have a higher density. Life on the Vine Christian Church had a density of 39.1 persons per acre, Congregation Beth Judea had 87.9 persons per acre, Temple Chai had 105.1 persons per acre, and Long Grove Community Church had a density of 260 persons per acre. The purpose of the Public Assembly Ordinance was to "regulate the size of all new public assembly uses, including churches . . . and served the rational purpose of ensuring that new assembly uses were consistent with the Village's zoning goals." However, all of these structures were built prior to the Public Assembly Ordinance, and those building erected after the Ordinance was passed are subject to the Ordinance's regulations. See supra, note 3.

Additionally, two busy public schools are located across the street from Vision's land, on 75 acres, with a combined student and staff capacity of 1300 people. See Pl.'s Stmt. of Mat. Facts, P 92-93, 96. The schools are combined onto one, 4.1 acre building, 172,000 square feet, with at 191,000 square foot parking lot. See Pl.'s Resp. at 19. However, both of these schools were built prior to the enactment of the Public Assembly Ordinance. Additionally, public schools serve a completely different function separate from churches, and the Village did not have zoning authority over the location and size of these schools. See Def.'s Stmt. of Mat. Facts, P 82. One of the schools has filed a lawsuit in Lake County Circuit Court.

At its core, Vision's argument is that the denial to build a larger religious structure, somehow amounts to a violation of Vision's equal protection rights under the *Fourteenth Amendment*. However, "whatever the obstacles that the [Village] might present to a church's ability to locate on a specific plot of land, they in no way regulate the right, let alone interfere with the ability, of an individual to adhere to the central tenets of his religious beliefs." *Civil Liberties for Urban Believers, 342 F.3d at 766.* This is the most significant aspect of this case. The Village in no way prohibited Vision's members from practicing their religion. The limitations the Village placed on Vision's location "are not the regulation of a belief, any more than regulating the location of the Chicago Tribune building is a regulation of the newspaper's *First Amendment*-protected product." *Id.* (quoting *Civil Liberties for Urban Believers v. City of Chicago, 157 F. Supp.2d, 903, 908 (N.D. Ill. 2002).* Here the Village allows any and all religious groups to build within its boundaries, provided that the religious groups adhere to the Village's zoning requirements. In the final analysis, the Village does not try to place restrictions on Vision's beliefs or their ability to practice its religion. Such a concern does not run afoul of the Constitution. Therefore, because Vision cannot establish a genuine issue of material fact as to whether the Village denied Vision its *Fourteenth Amendment* Equal Protection rights, summary judgment is proper for the Village as to Vision's Equal Protection claim.

E. Vision's Vested Rights Claim

Vision's Amended Complaint also contains a vested rights claim. Vision alleges that it acquired a vested right to build a church on the property after it sold its facility in Park Ridge in reliance on the Lake County Zoning Ordinance. See Am. Compl., PP 57-58. Under Illinois law, in order for a plaintiff to have vested rights to a zoning approval, that plaintiff must spend money in reliance on the probability that zoning approval will be forthcoming un-

der the municipality's existing laws. See *Northern Trust Co. v. County of Lake, 353 Ill. App. 3d 268, 818 N.E.2d 389, 397, 288 Ill. Dec. 701 (Ill. App. Ct. 2004).* A landowner's need for approval on the part of the municipality, such as the grant of a special use permit, defeats a vested rights claim. See id; see also *Zeitz v. Vil. of Glenview, 304 Ill. App. 3d 586, 710 N.E.2d 849, 855-56, 238 Ill. Dec. 52 (Ill. App. Ct. 1999).*

When a property owner spends money or incurs obligations in "reliance on the probability that a building permit will be issued . . a vested right to obtain the permit may be acquired . . . even though the zoning classification of the property is subsequently changed to prohibit the proposed use." *Northern Trust, 818 N.E. 2d at 397.* In order for a landowner to invoke this rule, he must show: "(1) that there was a probability' that [municipal approval] would issue, and (2) that a substantial change in position was incurred based upon this probability." *Id.* (citing *Bank of Waukegan v. Vil. of Vernon Hills, 254 Ill. App.3d 24, 31, 626 N.E.2d 245, 193 Ill. Dec. 212 (1993)).* Probability of municipal approval is established when the "property at issue is zoned to permit the use requested by the landowner." *Id.*

Vision challenges the county ordinance, alleging, "under the Lake County Zoning Code, a church was a permitted use, as of right, on the property." Am. Compl., P 55. Therefore, it appears that Vision's Vested Rights cause of action is grounded in the Lake County Zoning Ordinance. "Vision was legally entitled to rely on the Lake County zoning of the Subject Property in their decision to purchase it. . . . Accordingly, Vision acquired a vested right to build a church on the Subject Property." *Id.*, PP 56-57. However, Vision names only the Village in its suit.

Furthermore, Vision cannot establish that there was a probability of municipal approval to build a church complex on its property. When Vision bought the land, the contract included a contingency clause that allowed Vi-

sion to terminate the contract if it did not receive approval from the Village. See Def.'s Stmt. of Mat. Facts, P 19, Ex. 7. Vision decided not to terminate the contract. Therefore, Vision cannot establish that there was a probability that the Village would have granted its application, when Vision itself is uncertain as to how the Village would decide the issue. As a result, there are no genuine issues of material facts as to Vision's Vested Rights claim and summary judgment is appropriate as to this count. See *Szymanski, 231 F.3d at 364.*

F. Arbitrary and Capricious Denial of Special Use Permit

Vision also alleges that the Village's denial of the Special Use permit was arbitrary and capricious. Vision further alleges that the reasons given by the Village, such as the proposed use was not compatible with the surrounding neighborhood, and that Vision had a hidden agenda to create a super-church, were not a proper basis for the denial of a special use permit. See Compl., P 52. Vision also seeks damages in excess of $ 10,000,000.00 for economic losses caused by the Village's actions.

Under the Illinois Tort Immunity Act, municipalities are immune from damages resulting from their legislative decisions. See *745 Ill. Comp. Stat. 10/2-104*; see also *Vil. of Bloomingdale v. CDG Enterprises, Inc., 196 Ill. 2d 484, 752 N.E. 2d 1090, 1099-1100, 256 Ill. Dec. 848 (Ill. 2001)* ("*section 2-104* plainly grants immunity for injury caused by the denial of any permit' and is, therefore, controlling."). Therefore, Vision is barred from recovering damages against the Village for their official actions. There is no evidence that raises more than a mere scintilla of evidence to show a genuine triable issue of material fact on this matter. See *Szymanski, 231 F.3d at 364*; see also *Vukadinovich, 278 F.3d at 699.* As a result, summary judgment is appropriate as to Vision's Arbitrary and Capricious claim.

III. CONCLUSION

As the Seventh Circuit reminds us, "federal courts are not boards of zoning appeals." *River Park, Inc. v. City of Highland Park, 23 F.3d 164, 165 (7th Cir. 1994).* While Vision may have received an unfavorable decision from the Village, this court will not review the Board's ruling absent clear evidence of constitutional violations. For the foregoing reasons, the court grants Defendant's Motion for Summary Judgment as to all counts.

IT IS SO ORDERED.

ENTER:

CHARLES RONALD NORGLE, SR. Judge

United States District Court

DATED: October 17, 2005

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 05-4144 & 05-4234

VISION CHURCH,
Plaintiff-Appellant,

v.

VILLAGE OF LONG GROVE,
Defendant-Appellee.

May 2, 2006, Argued
November 7, 2006, Decided

RIPPLE, *Circuit Judge*. In 2003, Vision Church, United Methodist ("Vision") filed the present action against the Village of Long Grove, Illinois ("Village"); Vision alleged that the Village's denial of Vision's application for voluntary annexation, its involuntary annexation of Vision's property, its enactment of a municipal Public Assembly Ordinance, and its denial of Vision's applications for a special use permit to build and occupy a church on real property it had purchased violated the *First* and *Fourteenth Amendments to the Constitution of the United States*, the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), *see 42 U.S.C. § 2000cc*, and various Illinois laws. The district court granted summary judgment in favor of the Village on October 7, 2005. Vi-

sion now appeals. For the reasons set forth in the following opinion, we affirm the judgment of the district court.

I. BACKGROUND

A. Facts

1. Application for Annexation

Vision is a religious corporation of the State of Illinois currently located in Mundelein, Illinois; it was founded in 1981, joined the United Methodist denomination in 1988, and adopted the name "Vision Church, United Methodist" in August 2001. Its membership, which currently totals approximately 120 persons, consists primarily of Korean-Americans.

The Village of Long Grove is an 18-square mile community located in Lake County, Illinois, with a population of approximately 6,000. According to the Village's "Comprehensive Plan," it is dedicated to preserving its "rural character," to the "provision of a quiet countryside" and to the enjoyment of "open space." R.98, Ex.3 at 02-1, 03-1. The Zoning Regulations of the Village of Long Grove ("Zoning Regulations") govern the building and location of public buildings, including religious institutions; under the Zoning Regulations, religious institutions are permitted as "special uses" in areas zoned as "R1," "R2" and "R3" Residential Districts, as are schools, fire stations and sewage treatment facilities.[1] *See* Zoning Regulations:

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[1] The Village's Zoning Regulations divide land into the following zoning districts: Residential ("R1," "R2" and "R3"); Historic Business ("B1"); Suburban Business ("B2"); Office and Research ("O&R"); Office ("O"); and Open Space ("OS-N," "OS-P" and "OS-R"). *See* Zoning Regulations: The Village of Long Grove § 5-3-1, R.99, Ex.2 (hereinafter "Zoning Regulations"). Each of the zones provide for "special uses." *Id.* § 5-2-11. To obtain a special use permit, an applicant must be in a district where the use is permitted as a "special use" and must meet the standards for qualifying as a special use set forth in § 5-11-6(D) of the Zoning Regulations. *See id.* § 5-11-6(D).

The Village of Long Grove § 5-4-2-2, R.99, Ex.2 (hereinafter "Zoning Regulations") (setting forth the special uses allowed in a "R1" district); *id.* § 5-4-3-2 (same for "R2"); *id.* § 5-4-4-2 (same for "R3"); *see also id.* § 5-11-6(D) (setting forth the procedures governing the Village's consideration of an application for the "special use" of a property).

Prior to 1999, Vision was located in Park Ridge, Illinois. In 1999, however, it began looking for a new church site: It expected its membership to grow significantly in the upcoming years and desired a larger facility. It purchased a 27.40-acre vacant plot in unincorporated Lake County, Illinois, in September 2000, "with [the] intention to build a church there." R.1-1 at 3. "[M]any Korean-American immigrants in the Chicago-area and families in the congregation had moved to Lake County," making the site ideal for the construction of a new church facility. R.177-2, Ex.76 at 2.

At the time of purchase, Vision's property was zoned for church development under the Lake County Zoning Code; however, Vision desired to build the church within the incorporated municipality of the Village of Long Grove. Reverend Soon-Chang Jang, the head pastor of Vision Church, has explained that "Vision wanted to build a good relationship with the Long Grove residents," and believed that being within the Village would further this goal. *Id.* at 5. Therefore, on June 6, 2000, Vision applied to the Village of Long Grove for annexation under *65 ILCS 5/7-1-8*. *See 65 ILCS 5/7-1-8* ("Any territory which is not within the corporate limits of any municipality but which is contiguous to a municipality at the time of annexation. .. may be annexed to the municipality. .. [by] a written petition signed by the owners of record. .. . A majority vote of the corporate authorities then holding office is required to annex."). In its application, Vision requested as a condition of annexation that the Village zone its property "Residential (R2)" and grant Vision a "special

use" permit to construct a church complex on the property. R.177-1, Ex.52 at 1. It proposed plans for a 99,000-square foot church facility, consisting of five main buildings and an over 1,000-seat sanctuary.

Soon after the submission of this application, Vision and the Village entered negotiations over the conditions of annexation. During these negotiations, the Village expressed concern about the size of the church complex and its compatibility with the Village's goal of protecting natural resources and maximizing open space. In December 2000, at the Village's request, Vision agreed to submit revised plans; in March 2001, its representatives presented these revisions to the Plan Commission of the Village of Long Grove ("Plan Commission"). Under the new plans, the size of the church complex had been decreased to 56,200 square feet, consisting of three main buildings (a sanctuary, an administration building and a Sunday school building); the sanctuary would seat 600 instead of 1,000; and parking spaces were reduced from 400 to 240.

In addition, Vision agreed to comply with some, but not all, of the Village's conditions on construction. For example, it agreed to remove the "Fountain, Chapel in the Woods and Outdoor Amphitheater" from the plan, to mark "[a]ll wetland and conservancy soils. .. as lowland conservancy easements," and to serve the religious facilities "by on-site waste disposal systems and/or septic systems." R.98, Ex.14 at 2 (describing the conditions); *see also id.*, Ex.15 at 1 (accepting the conditions). However, in a letter dated August 6, 2001, Vision refused to consent to the following limitations: (1) that "easement language. .. be placed on site plan indicating no future structures or impervious parking allowed"; (2) that "[t]he area marked 'playing field' on the east side of the plan. .. be marked 'Natural Landscaped Area'. .. and no organized outside activities. .. be allowed in the area"; and (3) that "[o]nly two services Sunday or holidays excepting weddings and funerals [be held]. And no more than one major activity

each week Monday through Friday, excepting weddings and funerals." *Id.*, Ex.14 at 2; *see also id.*, Ex.15 at 1 (rejecting the conditions). Specifically, Vision claimed that the second condition was inconsistent with its intention "to have a playground for children"; it claimed that the third limitation "necessarily entangle[d] the Village in the operations of the Church." *Id.*, Ex.15 at 1.

On August 7, 2001, the Plan Commission voted to recommend the denial of Vision's application for annexation.[2] On August 14, this recommendation was accepted by the Long Grove Board of Trustees ("Board").[3]

2. Involuntary Annexation and the Public Assembly Ordinance

In May 2001, while Vision's application for annexation still was pending with the Plan Commission, a local developer, Joseph Valenti, also applied for voluntary annexation of his land. Valenti owns 120 acres of land adjacent to Vision's property; like Vision, Valenti wanted his land to be within the Village's corporate boundaries. He further requested that, upon annexation, the Village rezone his land "Residential." The Plan Commission recommended approval of Valenti's application on Septem-

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[2] *See also* Plan Commission Agenda, R.100, Ex.21 at 2 (summarizing the Plan Commission's objections to the revised plans, including "the size of the parking lot; the buildings having been reduced by only a few thousand square feet; the future growth. ..; and the setting of precedent for future development on large parcels within the Village").

[3] No action was taken at this time with regard to Vision's application to rezone its land as a Residential District or for a special use permit. In the absence of annexation, the Village did not possess jurisdiction over Vision's property and, therefore, had no authority to address these matters.

ber 4, 2001.[4] The Board accepted this recommendation on October 9, 2001.

As a result of the annexation of Valenti's property, Vision's land was surrounded on all sides by property within the Village's corporate boundaries. Under *65 ILCS 5/7-1-13*, the Village therefore had the authority to involuntarily annex Vision's property without regard to the conditions of annexation previously set by Vision. *See 65 ILCS 5/7-1-13* ("Whenever any unincorporated territory containing 60 acres or less, is wholly bounded by [] one or more municipalities. .. that territory may be annexed by any municipality by which it is bounded in whole or in part, by the passage of an ordinance to that effect after notice is given as provided in this Section."). On October 23, 2001, the Village passed an ordinance annexing Vision's property. *See* An Ordinance Annexing the Surrounded Property at the Southwest Corner of Gilmer and North Krueger Roads, R.1-1, Ex.D at 1-2 (noting that because "the unincorporated territory [owned by Vision] is contiguous to and totally surrounded by the Village of Long Grove," with proper notice, it may be annexed under *65 ILCS 5/7-1-13*). The Village zoned the property "R2" Residential, the zoning classification sought by Vision in its June 2000 application for annexation.[5]

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[4] Vision alleges that the Village "accelerated public hearings and development approvals" for Valenti's annexation application, in order to facilitate the subsequent involuntary annexation of Vision's property. *See* R.1-1 at 5 (noting that, typically, approval of an application for annexation takes far longer than 90 days).

[5] The involuntary annexation of Vision's property terminated its application for approval of building plans with Lake County. When purchased by Vision, the property in question was located in Lake County. Vision thereafter applied for voluntary annexation to the Village; as an alternative to annexation, it also applied at this time for permission from Lake

In November 2001, the Manager of the Village of Long Grove, Cal Doughty, introduced an amendment to the Village's Zoning Regulations, entitled, "An Ordinance Amending the Village Code Regarding Public Assemblies" (the "Assembly Ordinance"). The Ordinance restricts the size and capacity of buildings used for "public assembly," such as "religious institutions, aquariums, libraries, museums, private schools, and other similar uses," R.1-1, Ex.F at 1.[6] Specifically, it provides that a complex comprised of three buildings located on fifteen or more acres, but not fronting a state highway, cannot exceed a total square footage of 55,000.[7] It also imposes restrictions on parking, setbacks from the road and the flow of traffic. According to the Village Planning and Development Committee, the Ordinance is designed to preserve the status of the Village as a "low density, residential community," as desired by its residents, and to thwart the

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County to build a church complex on the property. Because Lake County Zoning Code requires neither a special permit nor rezoning of the property, at the time of the involuntary annexation Vision merely was awaiting approval of building plans by the Lake County Board. However, after the property was involuntarily annexed by the Village of Long Grove, Lake County no longer had jurisdiction to consider Vision's plans or to approve the building of the church complex.

[6] Although the Village Zoning Regulations detailed the standards governing the approval of a special use application, prior to the passage of the Assembly Ordinance, the Regulations did not specify maximum capacity or size or minimum lot size for buildings constructed on properties within the Village's jurisdiction.

[7] The permissible square footage is 100,000 if the complex is located on twenty or more acres and fronts a state highway; the permissible square footage decreases if the complex contains one or two, instead of three, buildings. *See* R.1-1, Ex.F at 1 (also imposing various regulations on parking and maximum lot coverage).

development of buildings that "defeat the very purpose of the scenic corridor." R.100, Ex.47 at 1-2. The Board enacted the Assembly Ordinance on April 9, 2002; it was incorporated as section 5-11-6.1 of the Zoning Regulations.

3. Vision's 2002 Application for a Special Use Permit

After its involuntary annexation, Vision's property was zoned by the Village "R2" Residential, which permits the construction of a religious facility with a special use permit. On January 23, 2002, approximately four months prior to the passage of the Assembly Ordinance, Vision applied for such a permit. However, instead of the 56,200-square foot complex discussed in March 2001 during negotiations over voluntary annexation, Vision requested approval in its special use application for a 99,000-square foot, 5-building, 1,000-seat sanctuary facility,[8] similar to the facility originally proposed in 2000.[9]

A public hearing was held on Vision's application in May 2002, after the passage of the Assembly Ordinance. The Plan Commission ultimately recommended the denial of Vision's request for a permit, given that the 99,000-square foot complex far exceeded the permissible square footage for a facility on property of this size and

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[8] *See also* Board Meeting Minutes, R.99, Ex.14 at 4 (describing the terms of the 2002 application); *see also* R.177-1, Ex.72 (comparing the 2001 and 2002 plans).

[9] In June 2002, Vision presented amended plans for an 80,000-square foot facility, but nevertheless asked the Plan Commission to vote on the 99,000-square foot proposal.

nature under the Assembly Ordinance. The Board accepted this recommendation on July 9, 2002.[10]

Because its building plans have not yet been approved by the Board, Vision temporarily has relocated to shared space in Mundelein United Methodist Church in Mundelein, Illinois.

B. District Court Proceedings

On August 18, 2003, Vision filed the present action in the United States District Court for the Northern District of Illinois; an amended complaint was filed in December 2004. Counts I, II and XI of the amended complaint challenge (1) the Village's denial of Vision's September 2000 application for annexation; (2) the Village's involuntary annexation of Vision's property in October 2001; (3) the Village's passage of the Assembly Ordinance in April 2002, limiting the size and capacity of buildings used for public assembly; and (4) the Village's denial of Vision's application for a special use permit in both 2000 and 2002. Vision alleged that these actions "constitute[d] an infringement of Vision's *First Amendment* right to the free exercise of religion," R.62 at 11 (Count I); violated RLUIPA's free exercise provision, which prohibits land use regulations that impose a substantial burden on religious exercise, *see id.* at 12 (Count II); and resulted in a "substantial[] burden[] [on] Vision's exercise of religion," in violation of the Illinois Religious Freedom Restoration Act of 1998, *id.* at 24 (Count XI). Counts III and IV allege a violation of the *First Amendment* Free Speech and *Establishment Clauses*. Counts V and VI allege that the Village violated the *Fourteenth Amendment Equal Protection Clause* and RLUIPA's "[e]qual terms" provision by

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[10] *See* Board Meeting Minutes, R.99, Ex.14 at 4 (describing the project as a "high-density proposal in a low-density community").

a. Allowing restaurants, tearooms, taverns and health clubs as permitted uses in certain zones, but providing no zone in which churches are permitted uses; and

b. Imposing more restrictive requirements upon Vision than those imposed upon the six churches operating in Long Grove.

c. Imposing more restrictive requirements upon Vision than those imposed upon the schools directly to the north of the subject property.

Id. at 15 (Count V); *id.* at 16 (Count VI).

Counts VII and VIII allege that, because the Village's Zoning Regulations "provide[] no zone in which Vision or another newly arrived or newly formed church may locate except by permission of the Village Board," they violate the *First Amendment* and RLUIPA's prohibition on the unreasonable exclusion of religious activity. *Id.* at 17 (Count VII); *id.* at 18 (Count VIII). Count IX alleges that the Village's denial of Vision's applications for a special use permit was arbitrary and capricious. *See id.* at 19-20 (claiming that the Village's denial of the 2001 permit application was unjustified, and that the denial of the 2002 permit application was unsupported by "any findings"). Finally, Count X alleges that Vision had a "vested right to build a church on [its] property" because it purchased the land on the "good faith" belief that building and operating a church was a permitted use of the land under the Lake County Zoning Code; according to Vision, by "[i]nvoluntarily annexing Vision's property with the result that Vision would not receive a building permit from Lake County," and by "[p]assing the [Assembly Ordinance] with the result that Vision's proposed use could not be allowed under the Long Grove zoning ordinance," the Village impermissibly interfered with Vision's vested right. *Id.* at 21.

Vision requested that the district court issue a declaratory judgment that "it may use its property in Long Grove as a permitted use under Lake County or Long Grove zoning code, whichever is least restrictive"; enjoin the Village from further interfering with use of its property; and award compensatory and punitive damages in the amount of $ 5,000,000. *Id.* at 12. It also sought the award of attorneys' fees and costs.

In October 2003, the Northern Illinois Conference of the United Methodist Church (the "Conference") and its Presiding Bishop, C. Joseph Sprague, moved to intervene as of right, *see Fed. R. Civ. P. 24(a)*, or permissively, *see id. 24(b)(2)*, for the purpose of "support[ing]. .. the causes of action" of its member congregation, Vision Church. *See* R.10 at 1. As the Conference explained, Vision's property in the Village

> is held subject to a trust clause in favor of the Conference and the larger denomination and is also subject to reversionary rights in favor of the Conference. Thus, any impairment of Vision Church's constitutional and statutory rights to build, occupy and worship on its land in Long Grove is, by necessity, an affront to the Conference's distinct legal interests as well.

Id. at 1-2. On April 5, 2004, the district court granted the Conference's motion to intervene as of right under *Rule 24(a)*.

On March 9, 2005, the Village filed a motion for summary judgment on all counts; on this same day, Vision filed a cross-motion for summary judgment on Counts I, II, IV, V, VI, VIII, IX and X. On October 18, 2005, the district court granted summary judgment in favor of the Village on all counts.

First, the district court held that Vision had not demonstrated a violation of the *Establishment Clause*. It classified Vision's challenge as directed exclusively at the Assembly Ordinance and held that the ordinance is "secular in purpose because it merely controls development, and not Vision's religious activities." R.157 at 12. It also found that the primary effect of the Assembly Ordinance is not to inhibit or advance religion; the court rejected the significance of the "temporal proximity between Vision's involuntary annexation and the passage of the Public Assembly Ordinance" and instead found dispositive the fact that the ordinance applies to *all* public use facilities, religious and non-religious alike, as well as that the Village did not "affiliate[] itself with one religion,. .. thereby taking sides against Vision." *Id.* at 13. For these same reasons, the court found no excessive entanglement with religion.

Second, the court concluded that the Assembly Ordinance does not violate the *Free Exercise Clause*. "[R]estriction[s] on the physical size of the proposed buildings" do not necessarily "restrict[] [] Vision's beliefs or customs." *Id.* at 15. The size restrictions in this case are traceable to neutral land planning goals; in addition, 55,000 square feet is "ample space to house a congregation of 140 adults and 80 children comfortably." *Id.*

The district court determined that Vision's RLUIPA claims fared no better. Section 2(a)(1) of RLUIPA prohibits the imposition of a "substantial burden on the religious exercise of a person, including a religious assembly or institution." *42 U.S.C. § 2000cc(a)(1)*. Applying this test, the district court held that Vision "did not incur a 'substantial burden' for purposes of the RLUIPA." R.157 at 18. Because it could have built a 55,000-square foot facility on the property, in compliance with the Assembly Ordinance, "it was Vision, not the Village," that ultimately is responsible for the church not being approved by the Plan Commission and the Board. *Id.* The court also

found that the "over fifty conditions" imposed on the "proposed development of the church complex" did not constitute a substantial burden on religious exercise because these conditions did not "render[] *any* religious exercise on the property effectively impracticable." *Id.* at 18-19 (emphasis added). Moreover, the conditions did not impact the Village's ultimate decision not to approve construction: Had Vision submitted a plan that complied with the ordinance's size restrictions, "there might be a church complex today." *Id.*

The district court similarly rejected Vision's claims with respect to RLUIPA § 2(b)(1), which prohibits the "impos[ition] or implement[ation] [of] a land use regulation in a manner that treats a religious. .. institution on less than equal terms with a nonreligious. .. institution." *42 U.S.C. § 2000cc(b)(1).* According to the district court, Vision has not "identified a non-religious group that has received more favorable treatment," given that "the Village. .. does not apply the [Assembly] Ordinance only to religious institutions, but evenly to all petitioners that come before the Plan Commission," including schools and existing churches within the Village. R.157 at 20.[11]

The district court next turned to Vision's *Fourteenth Amendment* equal protection claim. It held that the Assembly Ordinance is subject only to rational basis scrutiny because it is "facially neutral and generally applicable," *id.* at 24; it does not classify on the basis of race, gender, national origin or religion, but rather only distinguishes between public assembly and private locations. Further, the size limitations imposed by the Assembly

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[11] The district court recognized that the schools across the street from Vision's property are larger than 55,000 square feet; however, because they were "built in 1999, before the Public Assembly Ordinance was enacted," they were not subject to the same size restrictions as Vision. R.157 at 20.

Ordinance are rationally related to a legitimate government end -- that of carrying out the Village's "stated planning goals . . . for a quiet countryside, with an unhurried environment where families can enjoy the open space." *Id.* at 24.

Moreover, the court found that Vision had not demonstrated that "it is a class of one," who was "treated differently than others similarly situated" without a "rational basis for the difference in treatment." *Id.* at 22-23 (internal quotation marks omitted). Vision had claimed that, to build a restaurant or tavern, an owner need not obtain a special use permit, but a permit is required to build a church. However, according to the court, "these uses [are] only allowed in the Village's business district, as opposed to the Residential district where Vision wishes to build," demonstrating that Vision is not "similarly situat[ed]" to these institutions. *Id.* at 23. In sum, "Vision was treated the same under the Ordinance as any other developer" who sought to build a public assembly facility exceeding 55,000 square feet on a tract of land similar in size and location to Vision's property. *Id.* at 24.

The court also granted summary judgment to the Village on Vision's state law vested rights claim. Vision contended that it had purchased the 27 acres in reliance on the Lake County Zoning Ordinance, under which, at the time of purchase, "a church was a permitted use, as of right." *Id.* at 27 (internal quotation marks omitted). The district court rejected this claim. Vision's vested rights claim, it held, is grounded in the Lake County Zoning Ordinance and therefore both the complaint and the remedy sought is directed at the County; "[h]owever, Vision names only the Village in its suit." *Id.* Further, the court held that Vision could not "establish that there was a probability of municipal approval to build a church complex on its property," given that neither the Village nor Lake County had offered any assurances regarding the issue. *Id.*

Additionally, the district court rejected Vision's claim that the Village's denial of its application for a special use permit in 2002 was "arbitrary and capricious." *Id.* Not only is there "no evidence that raises more than a scintilla of evidence to show a genuine triable issue of material fact on this matter," but the Village cannot be sued for monetary relief under the Illinois Tort Immunity Act, *see 745 Ill. Comp. Stat. 10/2-104.*

Lastly, in a footnote, the district court granted summary judgment to the Village on Vision's "exclusion" claims. "There is no 'exclusion' clause in the *First Amendment*," the court concluded, "and therefore the court grants summary judgment on this Count." R.157 at 11 n.2.

Vision timely appealed.

II. DISCUSSION

We review the district court's grant of summary judgment de novo . *See Sornberger v. City of Knoxville, 434 F.3d 1006, 1012 (7th Cir. 2006).* In doing so, we must construe all facts and reasonable inferences in the light most favorable to the non-movant. *See id.* Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).*

A. Vision's "Exclusion" Claims

Vision first contends that the district court erred in holding that "[t]here is no 'exclusion' clause in the *First Amendment*" and that summary judgment was proper on Count VII. R.157 at 11 n.2. According to Vision, the Supreme Court previously has recognized that, when activity protected by the *First Amendment* is "excluded" by

municipal ordinance, the municipality must "advance[] sufficient justification" for its actions -- a requirement that, in turn, was codified in *RLUIPA § 2(b)(3)*. Appellant's Br. at 19 (discussing *Schad v. Borough of Mount Ephraim, 452 U.S. 61, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981)).*

In *Schad, 452 U.S. 61, 101 S. Ct. 2176, 68 L. Ed. 2d 671*, the Supreme Court addressed the claims of an adult bookstore in Camden County, New Jersey, against the Borough of Mount Ephraim. Inside the bookstore were "coin-operated devices by virtue of which a customer could sit in a booth, insert a coin, and watch an adult film," *id. at 62*; the Borough found that this activity violated § 99-15B of its zoning ordinance, under which "nude dancing[] is not a permitted use in any establishment in [its jurisdiction]," *id. at 65* (internal quotation marks omitted). The bookstore challenged the "imposition of criminal penalties under [the zoning] ordinance," claiming that the prohibition on live entertainment "violated [its] rights of free expression guaranteed by the *First* and *Fourteenth Amendments of the United States Constitution*." *Id.* The Supreme Court agreed and held that the ordinance as applied to the bookstore was constitutionally infirm:

> Whatever *First Amendment* protection should be extended to nude dancing, live or on film,.. .. the Mount Ephraim ordinance prohibits all live entertainment in the Borough: no property in the Borough may be principally used for the commercial production of plays, concerts, musicals, dance, or any other form of live entertainment. ... [A]s is true of other ordinances, when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest.. .. The Village may serve

> its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with *First Amendment* freedoms.

Id. at 66, 68, 70 (internal quotation marks omitted). The Supreme Court concluded that the Borough had not justified adequately its substantial restrictions on live entertainment; there was no evidence, the Court found, to support the Borough's claim that live entertainment brings with it a host of problems, such as parking and trash. *Id. at 74* ("[T]his ordinance is not narrowly drawn to respond to what might be the distinctive problems arising from certain types of live entertainment, and it is not clear that a more selective approach would fail to address those unique problems if any there are."). In sum, *Schad* stands for the proposition that an "ordinance [that] completely prohibit[s] the expressive conduct at issue," *Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702, 716 n.21 (7th Cir. 2003),* must be supported by "sufficient justification," *Schad, 452 U.S. at 67*, and be narrowly tailored to that justification, *see id. at 68*.

A similar *First Amendment* protection, albeit limited to religious freedoms, is embodied in RLUIPA § 2(b)(3). *Section 2(b)(3)* prohibits a "government" from

> impos[ing] or implement[ing] a land use regulation that --
>
> > (A) totally excludes religious assemblies from a jurisdiction; or
> >
> > (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C. § 2000cc(b)(3).[12]

It should be noted that the Village does not challenge the constitutionality of RLUIPA. *See also Freedom Baptist Church of Delaware County v. Township of Middletown, 204 F. Supp. 2d 857 (E.D. Pa. 2002)* (upholding RLUIPA against the claim that Congress exceeded its authority under the *Commerce Clause* when it adopted the legislation; also holding that RLUIPA's substantial burden, equal terms and exclusion provisions do not violate the *Free Exercise Clause of the First Amendment* but instead codify *First Amendment* jurisprudence); *Mayweathers v. Terhune, 2001 U.S. Dist. LEXIS 22300, 2001 WL 804140 (E.D. Cal. 2001)* (upholding RLUIPA's constitutionality). *Cf. Charles v. Verhagen, 348 F.3d 601 (7th Cir. 2003)* (in the context of a prisoner's rights case, upholding the constitutionality of *42 U.S.C. § 2000cc-1(a)*).

According to Vision, because "[n]owhere in Long Grove is a church a permitted use" but instead churches are "allowed only as [] special use[s]," and because the right to religious exercise therefore is "exercisable only at the discretion of local governmental officials," the municipality has excluded the development of religious institutions within its jurisdiction, in violation of the *First Amendment* protections recognized by *Schad* and of *RLUIPA § 2(b)(3)(A)*. Appellant's Br. at 19. We cannot agree. *Schad* applies only to the complete and total exclusion of activity or expression protected by the *First Amendment*. *See Schad, 452 U.S. at 76* ("Here, the Bor-

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[12] RLUIPA was enacted in the wake of the Supreme Court's decision in *City of Boerne v. Flores, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997)*, which invalidated the Religious Freedom Restoration Act of 1993 ("RFRA"), insofar as that Act regulated state as well as federal action, on the ground that it exceeded Congress' power under the enforcement clause of the *Fourteenth Amendment*.

ough *totally* excludes all live entertainment, including nonobscene nude dancing that is otherwise protected by the *First Amendment*." (emphasis added)); *id.* (distinguishing *Young v. American Mini Theatres, Inc., 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976)*, on the ground that the Court in *Young* "did not purport to approve the *total exclusion* from the city of theaters showing adult, but not obscene, materials" (emphasis added)); *id. at 66* ("[T]he Mount Ephraim ordinance prohibits *all live entertainment* in the Borough: *no property* in the Borough may be principally used for the commercial production of plays, concerts, musicals, dance, or any other form of live entertainment" (emphasis added)); *see also Ben's Bar, Inc., 316 F.3d at 716 n.21* (classifying *Schad* as addressing an "ordinance [that] *completely prohibit[ed]* the expressive conduct at issue" (emphasis added)). The same is true of section 2(b)(3)(A) of RLUIPA. *See 42 U.S.C. § 2000cc(b)(3)(A)* (prohibiting the " *total[] exclu[sion]* [of] religious assemblies" (emphasis added)).

In the present case, the Village, by permitting churches in all residential districts as a special use, has not completely or totally excluded religious assemblies from its jurisdiction. Six churches currently operate within the Village. Moreover, Vision is permitted to build a church on the land as it is currently zoned, provided that it applies for a special use permit, complies with the procedures set forth in § 5-11-6(B) and (C) of the Village Zoning Regulations, and fulfills the standards governing the Board's consideration of a special use application set forth in § 5-11-6(D). Specifically, under § 5-11-6(D), the Board may grant a special use permit if the special use:

> 1. Is deemed necessary for the public convenience at that location;

> 2. Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
>
> 3. Will not cause substantial injury to the value of other property in the neighborhood in which it is located; and
>
> 4. Except as may be recommended by the Plan Commission and approved by the Village Board and conforms, except in the case of a planned development, to the applicable regulations of the district in which it is to be located.

Zoning Regulations § 5-11-6(D), R.99, Ex.2. In addition, § 5-11-6.1, which codified the Assembly Ordinance, mandates that Vision's plans comply with certain size and capacity restrictions.

This case therefore is distinguishable from *Schad,* where the zoning code excluded all live entertainment as a permissible use in the Borough's business district and did not set forth a method by which to obtain a special use permit for this activity. *See Schad, 452 U.S. at 64-66.* Here, by contrast, if the conditions set forth in the Village's zoning code are fulfilled, a church may be built on property zoned for residential use. *Cf. R.V.S., L.L.C. v. City of Rockford, 361 F.3d 402, 409 (7th Cir. 2004)* (holding that an ordinance permitting nude dancing only as a special use did not "amount[] to a total ban on protected activity," because it placed restrictions only on the *location* of such businesses). Thus, we conclude that the Village Zoning Regulations do not violate the *First Amendment* protections recognized in *Schad* or *RLUIPA § 2(b)(3)(A).*

This does not end our inquiry, however. *Section 2(b)(3) of RLUIPA* also prohibits a land use regulation

that "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." *42 U.S.C. § 2000cc(b)(3)(B).* As the legislative history evidences, "[w]hat is reasonable must be determined in light of all the facts, including the actual availability of land and the economics of religious organizations." 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady). In this case, we cannot conclude that requiring Vision to obtain a special use permit to build and operate its church in a residential district "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." *42 U.S.C. § 2000cc(b)(3)(B).* Vision's primary argument on appeal is that the Board's discretion in granting a special use permit is unbridled and therefore its consideration of Vision's application was unreasonable. We disagree. This is not a case where the "state [has] delegate[d] essentially standardless discretion to nonprofessionals operating without procedural safeguards." *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895, 900 (7th Cir. 2005).* The Board's discretion is narrowly circumscribed by the Village's Zoning Regulations, which set forth the various factors to be considered by the Board in addressing an application for a special use permit. *See* Zoning Regulations § 5-11-6(D), R.99, Ex.2; *id.* § 5-11-6.1.

Even if the Zoning Regulations were to grant the Board undue discretion, this does not demonstrate the violation of *RLUIPA § 2(b)(3)(B).* The requirement that churches obtain a special use permit is neutral on its face and is justified by legitimate, non-discriminatory municipal planning goals. As a general matter, special use designations are instruments of municipal planning that allow city officials to retain review power over land uses that, although presumptively allowed, may pose special problems. In this case in particular, the special use designation is substantially related to the municipal planning goals of limiting development, traffic and noise, and preserving open space; these goals, in turn, are reflected

in the Village's Comprehensive Plan, "which seeks to ensure that the semi-rural atmosphere of the community is maintained while simultaneously permitting a wide variety of quality development in character with the existing motif of the community." Comprehensive Plan, R.99, Ex.3 at 01-1. To carry out this goal, the Village also has required many secular institutions, including "[s]chools, elementary and high, including playgrounds and athletic fields," "[u]tility and public service uses," and "[n]ursing homes," to be approved as a special use in a residential district. Zoning Regulations § 5-4-2-2, R.99, Ex.2. Like these institutions, religious assemblies have a reasonable opportunity to build within the Village, provided that the requirements for a special use permit have been fulfilled.

B. *Establishment Clause*

Vision next contends that the district court erred in granting summary judgment to the Village on Count IV, its claim that the Assembly Ordinance and the "special-use standards" violate the *First Amendment's Establishment Clause*. Appellant's Br. at 44. The district court held that the Assembly Ordinance is secular in both purpose and effect and did not risk excessive entanglement with religion. Vision now responds that the Village's other land use regulations, and their application to Vision, violate the *Establishment Clause* because they "benefit[] existing religious institutions over new ones." *Id.*

The *First Amendment to the Constitution of the United States* provides, in pertinent part, that "Congress shall make no law respecting an establishment of religion. .. ." *U.S. Const. amend. I, cl. 1.*[13] In evaluating an *Establishment Clause* claim, "[t]he touchstone for our analysis is

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[13] This provision is made applicable to the states and its political subdivisions, including municipalities, through the *Fourteenth Amendment*.

the principle that the '*First Amendment* mandates governmental neutrality between religion and religion, and between religion and nonreligion.'" *McCreary County v. ACLU, 545 U.S. 844, 162 L. Ed. 2d 729, 125 S. Ct. 2722, 2733 (2005)* (quoting *Epperson v. Arkansas, 393 U.S. 97, 104, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968)).* "When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central *Establishment Clause* value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides." *McCreary, 125 S. Ct. at 2733.* Specifically, a government policy or practice violates the *Establishment Clause* if (1) it has no secular purpose, (2) its primary effect advances or inhibits religion, or (3) it fosters an excessive entanglement with religion. *Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971); see also McCreary, 125 S. Ct. at 2733* (reaffirming *Lemon* 's "three familiar considerations for evaluating *Establishment Clause* claims"). "The *Establishment Clause* also prohibits the government from favoring one religion over another without a legitimate secular reason." *Kaufman v. McCaughtry, 419 F.3d 678, 683 (7th Cir. 2005); see also Berger v. Rensselaer Cent. Sch. Corp., 982 F.2d 1160, 1168-69 (7th Cir. 1993)* ("Under the *Establishment Clause*, the government may not aid one religion, aid all religions or favor one religion over another.").

Vision's primary argument is that, by imposing restrictions on the construction of new churches, including the size and capacity regulations set forth in the Assembly Ordinance and the findings required by § 5-11-6(D) of the Zoning Regulations, the Village discriminates against the "practices of new religious assemblies." Appellant's Br. at 44. According to Vision, these restrictions "make it easier for the adherents of one or more sects to practice their religions [while not] extend[ing] these benefits, however slight, to the adherents of other sects." R.89 at 3.

We agree with the district court that Vision has not demonstrated that the Village's land use regulations have no secular purpose, that their primary effect advances or inhibits religion or that they foster excessive entanglement with religion. We first address whether the applicable provisions -- the Assembly Ordinance and the special use standards -- have a secular purpose. "In determining whether a particular government action affecting a religious symbol has a secular purpose, a government's characterization of its purpose is entitled to deference," although courts "must ensure that the government's characterization is sincere." *Mercier v. Fraternal Order of Eagles, 395 F.3d 693, 704 (7th Cir. 2005).* In the present case, the Village contends that the land use regulations are justified by the goals of the Village's Comprehensive Plan -- that of minimizing development and maximizing open space. Although we express some concern about the general course of events in this case,[14] we ultimately find this secular purpose to be "sincere." *Id.* The Comprehensive Plan discusses repeatedly the "semi-rural" nature of the Village, the community's emphasis on "open space," and the importance of conforming development to these goals. R.99, Ex.3 at 01-1. As the Plan itself states:

> Since its incorporation in 1956, the residents of Long Grove have diligently worked to develop and vigorously supported a comprehensive plan which seeks to ensure that the semi-rural atmosphere of the community is maintained while simultaneously permitting a wide variety of quality development in character with the existing motif of the community.. .. Preserving Long Grove's semi-rural

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[14] This case presents no claim that the Village has discriminated against Vision on the basis of race or ethnicity and, of course, we express no view on this issue.

> charm, while still permitting quality development, is the most important goal of this Comprehensive Plan.

Id. Further, in describing the Village's "Community Character," the Comprehensive Plan explains:

> Long Grove's unique community character sets it apart from adjoining communities. The most critical of the Village's goals are the provision of a quiet countryside, with an unhurried and unstructured environment where families can live and enjoy the open space, and the preservation of community character through Long Grove's consistent and long-standing efforts to maintain the qualities of such lifestyles.

Id. at 03-1. n14.

The land use regulations challenged by Vision are tailored to this secular purpose. The Assembly Ordinance applies to all buildings used for "public assembly," including not only "religious institutions," but also "aquariums, libraries, museums, private schools, and other similar uses." R.1-1, Ex.F at 1. It limits the size of these buildings not on the basis of their religious affiliation but on the basis of their location and acreage. For example, if a plot of land fronts a state highway, the owner can build a larger facility, in part because the state highway can handle the traffic demands of that facility; smaller plots that front only a county highway are more limited and must build a smaller facility. Similarly, the allegedly "discretionary special use process," Appellant's Br. at 45, is justified by the secular goal of facilitating municipal control of property uses that have a greater "impact. .. upon neighboring lands," Zoning Regulations § 5-11-6(A), R.99, Ex.2. The secular nature of the special use standards is

made evident by the Zoning Regulations themselves: They apply not only to "churches," but also to those property uses that "may give rise to unique problems with respect to their impact on neighboring property or public facilities," *id.* § 5-11-6(A)(2), including among other things "[s]chools," "[s]helters. . . for school bus transportation" and "[r]ecreational clubs," *id.* § 5-4-2-2(A), (B), (E).

Second, the land use regulations challenged by Vision do not have a primary effect of advancing or inhibiting religion, or, more specifically, advancing established churches over new churches. "In this prong, our focus is not on the intent of the City, but on whether a reasonable person, apprised of the circumstances surrounding the sale, would conclude that the sale amounted to an endorsement of religion." *Mercier, 395 F.3d at 705.* The primary question is "whether, irrespective of the government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval." *Books v. City of Elkhart, 235 F.3d 292, 302 (7th Cir. 2000)* (internal quotation marks omitted).

We believe that a reasonable person would understand the effect of the Assembly Ordinance and special use requirements to be a limitation on Village development generally, not on religion specifically. Notably, Vision does not refute the claim that new churches *are* permissible under the Village's zoning ordinances; they, like other public assembly buildings, merely must abide by the size and capacity limitations set forth in the Assembly Ordinance and, like other special uses, comply with the procedures set forth in § 5-11-6 of the Zoning Regulations. Nor does Vision make a compelling argument that these limitations are so unreasonable as to demonstrate a *First Amendment* violation. Although Vision requested in 2002 that the Board vote on its plans for a 99,000-square foot facility, it previously had prepared plans for a 56,200-square foot facility, which is only 1,200 square feet larger than the largest church facility allowable under

the Assembly Ordinance. According to the record before us, a 55,000-square foot facility would fulfill the needs of Vision's 120-member (albeit growing) congregation: Under its 56,200-square foot plan, Vision's facility would have consisted of three main buildings and a 600-seat sanctuary, and was estimated to be able to serve a congregation of between 800 and 1,000 persons.[15] In sum, Vision -- and other new churches -- reasonably and without hardship could operate within the size and capacity restrictions imposed by the Village; we therefore conclude that the Ordinance does not have a primary effect of advancing or inhibiting religion.

The same is true of the standards governing the issuance of a special use permit. Vision does not contend that, had it met the size limitations imposed by the Assembly Ordinance, it would have been denied a special use permit because of the balancing of factors under § 5-11-6 of the Village's Zoning Regulations. Nor can it cite an example of a church denied a special use permit, when it already had fulfilled the requirements imposed by the ordinance. Further, Vision fails to establish that the requirements imposed on "new churches" are unreasonable or otherwise impermissible: Indeed, to accept Vision's position would be to hold that a municipality could *never* change its zoning regulations with the effect of mandating that new churches, and other institutions, fulfill requirements not imposed on churches previously constructed -- a position we simply cannot accept. Given that the zoning requirements are applied equally to secular and religious institutions alike and permit the construction of both institutions under certain, limited circumstances, we believe that "no reasonable person would be-

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[15] *See also* discussion *infra* at 42 (discussing whether, in the context of *RLUIPA § 2(a)(1)*, these limitations are reasonable).

lieve that [the effect of the zoning ordinances] was to advance religion." *Mercier, 395 F.3d at 705.*

We now turn to *Lemon* 's third factor, whether the municipality has entangled itself excessively with religion. Vision contends that the Village has become involved intimately in the religious exercise of its churches, including the "size and aesthetics of their worship facilities, the hours of operation, and the scheduling of religious activities." Appellant's Br. at 45. To be sure, the Village's Plan Commission, during early negotiations with Vision over voluntary annexation, requested that Vision consent to a number of conditions on construction, including limitations on the future development of church facilities and on the number and scope of religious activities. *See* R.98, Ex.14 at 2 (requesting that Vision restrict "outside activities" in the playing field); *id.* (requesting that Vision agree to hold "[o]nly two services Sunday or holidays excepting weddings and funerals. And no more than one major activity each week Monday through Friday, excepting weddings and funerals").[16]

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[16] It cannot be argued plausibly that these conditions, which are applications of a municipal policy, are not "laws" or legislative actions within the scope of the *Establishment Clause*. The *Establishment Clause* states that "Congress shall make no law respecting an establishment of religion." *U.S. Const. amend. I.* This constitutional provision has been applied to the states through the *Fourteenth Amendment* and has been interpreted as "imposing. .. substantive limitations on the legislative power of the States and their political subdivisions." *Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 301, 120 S. Ct. 2266, 147 L. Ed. 2d 295 (2000).* However, although the conditions requested by the Village and rejected by Vision do not involve the exercise of the municipality's "legislative power" per se, *id.*, but rather more fairly are classified as the interpretation by the municipality of policies already enacted by its legislative body, the scope of the *Establishment Clause* has been interpreted broadly by the Supreme Court and the courts of appeals. For example, in *Allegheny County v. ACLU, 492 U.S.*

However, to establish excessive entanglement with religion, Vision must demonstrate "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Jimmy Swaggart Ministries v. Bd. of Equalization of California, 493 U.S. 378, 393, 110 S. Ct. 688, 107 L. Ed. 2d 796 (1990)* (internal quotation marks omitted). This inquiry requires examination of "the character and purposes of the institutions that are benefitted, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority." *Id.* (internal quotation marks omitted). Moreover, the advancement or inhibition of religion must be more than de minimis. *See Tanford v. Brand, 104 F.3d 982, 986 (7th Cir. 1997).* The general rule is that, to constitute excessive entanglement, the government action must involve "intrusive government participation in, su-

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573, 612, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989), the Supreme Court held unconstitutional the placement of a cr che in the lobby of a courthouse, even though this conduct did not involve the exercise of legislative authority and did not even "command or prohibit conduct," *Glassroth v. Moore, 335 F.3d 1282, 1293 (11th Cir. 2003)* (discussing *Allegheny County*). *See Allegheny County, 492 U.S. at 612* ("To be sure, some Christians may wish to see the government proclaim its allegiance to Christianity in a religious celebration of Christmas, but the Constitution does not permit the gratification of that desire, which would contradict the logic of secular liberty it is the purpose of the *Establishment Clause* to protect." (internal citations and quotation marks omitted)). The same is true of *Lee v. Weisman, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992)*, in which the Supreme Court held that, "[a] school official, the principal, decided that an invocation and a benediction should be given; this is a choice attributable to the State, and from a constitutional perspective it is as if a state statute decreed that the prayers must occur." *Id. at 587.* In sum, under these precedents, so long as the conduct is "attributed to" the government entity or municipality, *id.*, it is subject to the constitutional limitations of the *Establishment Clause.*

pervision of, or inquiry into religious affairs." *United States v. Indianapolis Baptist Temple, 224 F.3d 627, 631 (7th Cir. 2000)* (discussing the taxation of religious institutions).

We cannot conclude that the conditions on construction requested by the Village in the course of negotiations over annexation with Vision rise to the level of excessive entanglement. First, the condition limiting future development is wholly secular in nature and consistent with the goals of maximizing open space and limiting Village development set forth in the Comprehensive Plan. Notably, a similar agreement was required of the public elementary schools built across the street from Vision's property, as a condition of annexation and a special use permit. Second, the condition limiting use of the outdoor area on Vision's plans marked "playing fields" also is secular in nature. Members of the Plan Commission expressed concern that this land, if unrestricted, would be used for "carnivals or similar activities"; they instead wanted the land, consistent with the general goals of maximizing the ratio of development to open space in the Village, to remain "permanently unbuildable," such that it would "mirror the Fields of Long Grove," a large open area on the other side of the road. R.98, Ex.11 at 2. These neutral concerns do not impermissibly involve the municipality in the religious affairs.

The third condition -- the request that Vision limit its Sunday services to two, excepting weddings and funerals, and limit its "major activit[ies]" during the week to one per week -- could be somewhat more problematic. *See Alicea-Hernandez v. Catholic Bishop of Chicago, 320 F.3d 698, 702 (7th Cir. 2003).* However, in its meetings discussing these conditions, the Commission defined a "major activity" as a non-"religious event[]" that "anticipate[s] [the] use[] of more than 50 percent of the parking spaces." R.98, Ex.11 at 3. Reading the record as a whole, it appears that the Commission's primary concern was traffic

control, rather than controlling the congregation's religious worship. In any event, the issue is not ripe for extended analysis. These conditions were raised by the Village during late 2000 negotiations over annexation; they were not raised again after the involuntary annexation of Vision's property in proceedings related to Vision's application for a special use permit in 2002. If this matter were to arise again in proceedings related to Vision's next application for a special use permit, the Church of course would be free to raise the issue anew.

C. Free Exercise of Religion

Vision also contends that the district court erred in dismissing its free exercise of religion claims under the *First Amendment* and RLUIPA. The district court held that the Village had not imposed any restriction on Vision's practices or beliefs; Vision now responds that "a number of the Village's actions" nevertheless "constitute a substantial burden [on the exercise of religion] by causing delay, uncertainty and expense." Appellant's Br. at 21 (internal quotation marks omitted).

"Under the *Free Exercise Clause of the First Amendment of the United States Constitution*, made applicable to state and local governments by the *Fourteenth Amendment*, no law may prohibit the free exercise of religion." *Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 762-63 (7th Cir. 2003)* (hereinafter " *CLUB* "). The *Free Exercise Clause*, the Supreme Court has noted, "withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority." *Jimmy Swaggart Ministries, 493 U.S. at 384* (internal quotation marks omitted). The relevant inquiry is two-fold. First, we examine whether the law being challenged is "neutral and of general applicability." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S.*

520, 531, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993). If not, it "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Id. at 531-32.* This does not end the inquiry, however: "[A] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion," in which case there must be "a compelling governmental interest justif[ying] the burden." *Jimmy Swaggart Ministries, 493 U.S. at 384-85* (internal quotation marks omitted).

The protections embodied by the *Free Exercise Clause* were codified in *RLUIPA § 2(a)(1),* which prohibits the government from

> impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution --
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). Simply put, both the *Free Exercise Clause* and RLUIPA provide that, if a facially-neutral law or land use regulation imposes a substantial burden on religion, it is subject to strict scrutiny.

Given the similarities between *RLUIPA § 2(a)(1)* and *First Amendment* jurisprudence, we collapse Vision's claims for the purpose of this analysis; this approach

seems most consistent with post-RLUIPA case law.[17] Our sister circuits have defined RLUIPA's substantial burden provision by reference to the Supreme Court's free exercise jurisprudence, finding this case law to be "instructive in determining what Congress understood 'substantial burden' to mean in RLUIPA ." *Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1226 (11th Cir. 2004)*; *see also Guru Nanak Sikh Soc. of Yuba City v. County of Sutter, 456 F.3d 978, 988 (9th Cir. 2006)*. Similarly, RLUIPA's legislative history indicates that the term "substantial burden" was intended to be interpreted by reference to *First Amendment* jurisprudence:

> The Act does not include a definition of the term "substantial burden" because it is not the intent of this Act to create a new standard for the definition of "substantial burden" on religious exercise. Instead, that term as used in the Act should be interpreted by reference to Supreme Court jurisprudence.. .. The term "substantial burden" as used in this Act is not intended to be given any broader interpretation than the Supreme Court's articulation of the concept of substantial burden or religious exercise.

146 Cong. Rec. S7774-01 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy).

Interpreting RLUIPA, we have held that a land use regulation imposes a "substantial burden" on religious exercise if it "necessarily bears direct, primary, and fun-

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[17] Regardless, Vision's arguments on both legal theories are the same. *See* Appellant's Br. at 21-29.

damental responsibility for rendering religious exercise -- including the use of real property for the purpose thereof within the regulated jurisdiction generally -- effectively impracticable." *CLUB, 342 F.3d at 761.* Similarly, interpreting the *First Amendment,* the Supreme Court has found a "substantial burden" to exist when the government put "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Hobbie v. Unemployment Appeals Comm'n of Florida, 480 U.S. 136, 141, 107 S. Ct. 1046, 94 L. Ed. 2d 190 (1987)* (internal quotation marks omitted).[18] With this analytical framework in mind, we now turn to Vision's specific arguments.

Vision's primary arguments on appeal are that it was "substantially burdened" by (1) the involuntarily annexation of its property, which it claims was done with the intent to "thwart Vision's church," Appellant's Br. at 24; (2) the Village's conditions on annexation; and (3) the passage of the Assembly Ordinance.[19]

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[18] This definition has received further definition by the lower federal courts. *See, e.g., Guru Nanak Sikh Soc. of Yuba City v. County of Sutter, 456 F.3d 978, 988-89 (9th Cir. 2006)* ("[F]or a land use regulation to impose a substantial burden, it must be oppressive to a significantly great extent. That is, a substantial burden on religious exercise must impose a significantly great restriction or onus upon such exercise." (internal quotation marks omitted; alteration in original)); *Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004)* ("We have held that an individual's exercise of religion is 'substantially burdened' if a regulation completely prevents the individual from engaging in religiously mandated activity, or if the regulation requires participation in an activity prohibited by religion.").

[19] Vision makes two additional claims. First, it contends that the differential treatment of it and the public schools across the street constitutes a "substantial burden" on its religious exercise. Appellant's Br. at 23. This claim more appropriately is addressed in the context of Vision's equal protection and RLUIPA equal treatment claims. *See infra.* Second, Vision

Vision's claim as it relates to involuntary annexation does not state a valid cause of action under *RLUIPA § 2(a)(1)*. That section forbids a government agency to "impose or implement a *land use regulation* in a manner that imposes a substantial burden on the religious exercise of a person," *42 U.S.C. § 2000cc(a)(1)* (emphasis added); "land use regulation," in turn, has been defined as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land," *42 U.S.C. § 2000cc-5(5)*. "Under this definition, a government agency implements a 'land use regulation' only when it acts pursuant to a 'zoning or landmarking law' that limits the manner in which a claimant may develop or use property in which the claimant has an interest." *Prater v. City of Burnside, 289 F.3d 417, 434 (6th Cir. 2002)*. The process of annexation, whether voluntary under *65 ILCS 5/7-1-8* or involuntary under *65 ILCS 5/7-1-13*, may indeed make possible the subsequent zoning or marking of the land; however, an annexation statute is not itself a "zoning" or "landmarking" regulation and its application therefore does not constitute government action covered by RLUIPA.

We cannot conclude that either the Village's denial of Vision's application for annexation or its subsequent involuntary annexation of Vision's land constitutes a violation of the *Free Exercise Clause of the First Amendment.*

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discusses extensively the uncertainty and expense caused by the zoning and approval process. We recognize that Vision purchased its land in 1999 and, seven years later, still is seeking permission to build on the land. However, we remind the plaintiff that "the federal courts are ordinarily not vehicles to review zoning board decisions," and, in the absence of evidence tying the Board's actions to intentional discrimination, we decline to overturn the Board's decision on this basis. *Harding v. County of Door, 870 F.2d 430, 432 (7th Cir. 1989).*

As we noted in *CLUB*, "no *Free Exercise Clause* violation results where a burden on religious exercise is the incidental effect of a neutral, generally applicable, and otherwise valid regulation, in which case such regulation need not be justified by a compelling governmental interest." *CLUB, 342 F.3d at 763*; *Midrash Sephardi, 366 F.3d at 1227* ("[W]e agree that 'substantial burden' requires something more than an incidental effect on religious exercise.").

In this case, both annexation statutes are wholly neutral and apply generally to all property owners seeking annexation and to all persons owning property bounded on all sides by property within the municipality. *See 65 ILCS 5/7-1-8, 13.* To be sure, the Village admits that, in invoking its powers under *65 ILCS 5/7-1-13*, it sought to control the future development of Vision's property; but there is no evidence that Village desired such control *because* Vision is a *religious* institution or a religious institution of a certain denomination. Nor is there evidence that the effects of the Village's actions were anything more than incidental: The record evidence indicates that it is not because of the denial of the 2000 application for annexation or because of the 2001 involuntary annexation that Vision's church currently is not being constructed; rather, it is because of Vision's refusal to abide by the size restrictions imposed by the Assembly Ordinance that it later was denied a special use permit to construct a church on its land.

Vision next alleges that the Village improperly imposed conditions on its annexation and approval for a special use permit. This claim is covered by both RLUIPA and by the *First Amendment Free Exercise Clause.*[20]

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[20] Vision's argument in effect challenges the application of municipal standards governing the approval of property for a special use, contained in § 5-11-6(D) of the Village Zoning Regulations; these standards are part of a "zoning law" covered by RLUIPA. The same is true of Vision's challenge to the con-

However, as we explained in the context of the *Establishment Clause*, we ultimately conclude that these conditions -- which included limitations on future development, on the use of a particular outdoor area, and on Sunday and weekly activities -- are no more than incidental burdens on the exercise of religion. Our analysis in *CLUB* is instructive. There, we rejected the plaintiff's suggested interpretation of "substantial burden," holding that, under such an interpretation, "the slightest obstacle to religious exercise incidental to the regulation of land use -- however minor the burden it were to impose -- could then constitute a burden sufficient to trigger RLUIPA's requirement that the regulation advance a compelling governmental interest by the least restrictive means." *342 F.3d at 761.* Similarly, here, we find that the conditions on construction impose only a minor burden on Vision's operations: The first two conditions are neutral and traceable to municipal land planning goals. The latter condition, limiting activities at the church, is more troublesome, as previously noted. However, a burden must be more than a mere inconvenience to rise to the level of a constitutional injury; it must place "significant pressure" on Vision to "forego religious precepts" or to engage in "religious conduct." *Midrash Sephardi, 366 F.3d at 1227.* Because there is no evidence that these conditions affected the Village's later decision to forcibly annex the property, to enact the Assembly Ordinance and ultimately to deny Vision's 2002 application for a special use permit, we cannot conclude on this record that Vision has demonstrated a substantial burden.[21] n21 Notably, the record indicates that, had Vision complied with maximum size requirements imposed by the Public Assembly Ordinance, there likely would be a church complex currently

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stitutionality of the Assembly Ordinance, which amended the Village's Zoning Regulations.

[21] *See also* discussion *supra* at 33-34.

being constructed, notwithstanding its rejection during earlier negotiations of limitations on future development, worship services and other institutional activities.

Lastly, we turn to Vision's contention that the enactment of the Assembly Ordinance constitutes a "substantial burden" on its right to the free exercise of religion. The Assembly Ordinance is facially neutral; it applies to the new construction of *all* public use buildings, regardless of their purpose, including not only "religious institutions," but also "aquariums, libraries, museums, private schools, and other similar uses," R.1-1, Ex.F at 1. According to Vision, despite its neutrality, the Ordinance was passed for the sole purpose of forcing Vision to reduce the size of its proposed complex, which, in turn, substantially burdens Vision's potential success. Besides temporal proximity between Vision's dispute with the Village over a special use permit and the enactment of the Ordinance, there is no evidence in the record to support this claim. Even if Vision was targeted by the Assembly Ordinance, this does not mean that it was targeted *because of religion*: The Plan Commission was concerned about the size of the church complex and its effect on the character of the Village, concerns separate and independent from the religious affiliation (or lack thereof) of the institution seeking to build on the land.

Moreover, there is no triable issue of fact with respect to whether the size, capacity and other restrictions imposed by the Ordinance constitute a non-incidental, substantial burden on the exercise of religion. Under the ordinance, Vision would be permitted to build a 55,000-square foot facility. As mentioned previously, [22] experts estimate that a facility of this size would be able to meet

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[22] *See supra* at 29.

the needs of an 800 to 1,000 member congregation.[23] Vision currently has 120 members. Although we recognize that Vision plans to grow in size, we cannot fathom a situation in which limiting the church to a three-building, 55,000-square foot facility would impose an unreasonable and substantial burden on religious exercise; the congregation would have to increase eight-fold to reach its maximum capacity. Notably, the second set of plans proposed by Vision in the course of early negotiations totaled 56,200 square feet and consisted of three main buildings (a sanctuary, an administration building and a Sunday school building), a 600-seat sanctuary, and 240 parking spaces. Unlike in *New Berlin*, where the Appellant would have been required to find "[an]other parcel of land on which it could build its church, *" City of New Berlin, 396 F.3d at 899*, in this case, Vision was free to submit modified plans to the Board that could have "cure[d] the problems and deficiencies cited by the Board," *Westchester Day Sch. v. Vill. of Mamaroneck, 386 F.3d 183, 188 (2d Cir. 2004)* (finding no "substantial burden" where this same opportunity was available to the plaintiff).

D. Equal Protection

We next address Vision's claim that the district court erred in dismissing its equal protection claims under the *Fourteenth Amendment Equal Protection Clause* and RLUIPA's equal terms provision. Vision contends that the Village "applied its laws to treat Vision differently

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[23] Specifically, Vision's expert estimated that a 40,000-square foot facility would accommodate a congregation with an average Sunday worship attendance of 500; in turn, average worship attendance typically is 60-80 of the total membership. Vision's expert further estimated that a facility of 75,000 square feet would be appropriate for a church with an average worship attendance of 1,000, and a membership of 1,250 to 1,600 people.

from other assembly uses similarly situated or prima facie identical in all relevant respects." Appellant's Br. at 42. Specifically, Vision argues that it was treated less favorably than "restaurants, tearooms, taverns and health clubs," which are permitted uses in some zones, while churches are not permitted uses in any zone, *id.*; further, Vision contends that it was treated less favorably than the "schools just across [the] road from Vision's property" because, although they submitted identical petitions for a special use permit, the school's application was granted and Vision's was denied, *id.* Because the legal framework for analyzing Vision's *Fourteenth Amendment* and RLUIPA claims differ, we address each in turn.

1. ***Fourteenth Amendment***

The *Equal Protection Clause of the Fourteenth Amendment* commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws," *U.S. Const. amend. XIV*, which essentially is a direction that all persons similarly situated should be treated alike, *Plyler v. Doe, 457 U.S. 202, 216, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982).* If a statute or municipal ordinance classifies by race, alienage, or national origin, we subject the legislative action to "strict scrutiny and [it] will be sustained only if [it is] suitably tailored to serve a compelling state interest"; "[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).* Heightened scrutiny also is appropriate when government action interferes with a person's fundamental rights, such as freedom of speech or religion. *See Eby-Brown Co., LLC v. Wisconsin Dep't of Agric., 295 F.3d 749, 754 (7th Cir. 2002).* If "no suspect class or fundamental right is involved," however, "we employ a rational basis test to determine whether the legislative act is constitutional." *Id.*

The municipal ordinances challenged by Vision do not classify on the basis of race, alienage or national origin. Further, as we conclude above, the Village's Zoning Regulations and the Public Assembly Ordinance do not discriminate on the basis of religion. We therefore apply only rational basis scrutiny to Vision's equal protection claims. *See Locke v. Davey, 540 U.S. 712, 720 n.3, 124 S. Ct. 1307, 158 L. Ed. 2d 1 (2004)* (holding that, where the challenged government action did not constitute a "violation of the *Free Exercise Clause*," only "rational-basis scrutiny" was warranted). In other words, Vision must demonstrate "governmental action wholly impossible to relate to legitimate governmental objectives." *Patel v. City of Chicago, 383 F.3d 569, 572 (7th Cir. 2004)* (internal quotation marks omitted). In pertinent part, to meet this standard, Vision must demonstrate "malicious conduct" on the part of government officials, or "conduct that evidences a spiteful effort to 'get' him for reasons wholly unrelated to any legitimate state objective." *Id. at 573* (internal quotation marks omitted).

This Vision cannot do. Vision points out that the Village's Zoning Regulations classify "restaurants, tearooms, taverns and health clubs" as permissible uses in business districts, while churches require a special use permit in residential districts. But, like churches, schools also are not permissible uses in residential districts, demonstrating that the distinction between permissible and special uses is not rooted in animosity towards religious institutions. *See* Zoning Regulations § 5-4-2-2, R.99, Ex.2. Further, the distinction can be traced to legitimate municipal land planning goals. The special uses in residential districts identified by the Zoning Regulations (i.e., schools, churches and recreational clubs) and the special uses in business districts (i.e., restaurant patios) raise unique concerns such as traffic control, noise pollution, and a greater impact on the landscape than more common uses. As the Third Circuit observed, "a municipality may chart out a quiet place where yards are wide, people few, and

motor vehicles restricted[.] [These] are legitimate guidelines in a land-use project addressed to family needs." *Congregation Kol Ami v. Abington Township, 309 F.3d 120, 135 (3d Cir. 2002)* (internal quotation marks omitted). Given these justifications for differential treatment, we cannot conclude that municipal officials acted "malicious[ly]" or irrationally. *Patel, 383 F.3d at 573.*

Vision also suggests that it was irrational for the Village to deny its application for annexation and a special use permit, while granting an identical application in July 1999 from Kildeer School District for the annexation of land and permission to build public elementary schools across the street from Vision's property. We cannot characterize these decisions as "wholly impossible to relate to legitimate governmental objectives." *Id. at 572.* Public schools serve a unique public function, and, given the discretion municipalities enjoy over annexation, *see Barefoot v. City of Wilmington, 306 F.3d 113, 121, 37 Fed. Appx. 626 (4th Cir. 2002),* it certainly was not irrational for the Village to want the School District's land to be within its municipal boundaries for the purpose of serving its students. Further, conditions on construction similar to those imposed on Vision, including a limitation on future development, were placed on the School District. *See* R.100, Ex.41 at 7-8. While Vision resisted the Village's request, the School District willingly agreed. In light of these considerations, approving the annexation of the School District's property while denying the annexation of Vision's property was not irrational. The same is true of the denial of Vision's special use application in 2002:[24] At

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[24] Vision compares its application for a special use permit in 2000 to the elementary school's similar application in July 1999. However, because Vision's application for annexation was denied by the Village in 2000, the Village did not have jurisdiction to grant or deny the special use permit; it never addressed or took action on this application. Thus, for the purpose of the above analysis, we consider only whether the Village's denial of Vision's 2002 application for a special use permit lacked ra-

the time that Village addressed Vision's special use application, it already had passed the Assembly Ordinance, imposing size and capacity limitations on the construction of a building used for public assembly. To deny Vision's application because it failed to submit plans that complied with these restrictions is rationally related to the goals reflected in the Assembly Ordinance.

Vision also raises a "class of one" equal protection claim. "We ha[ve] recognized equal protection claims brought by a 'class of one,' although we have acknowledged that it is difficult to succeed with such a claim." *Maulding Dev., LLC v. City of Springfield, 453 F.3d 967, 969 (7th Cir. 2006)* (internal quotation marks omitted; alteration in original). To establish a "class of one" claim, Vision must show that: "(1) it has been intentionally treated differently from others similarly situated; and (2) there is no rational basis for the difference in treatment or the cause of the differential treatment is a totally illegitimate animus toward [Vision]." *Id. at 970* (internal quotation marks omitted).

Vision cannot show that it was treated less favorably than an institution similarly situated. "[R]estaurants, tearooms, taverns and health clubs," Appellant's Br. at 42, are not similarly situated: They are permitted uses in the Village's *business district*; by contrast, the church is zoned "Residential." The apt comparison would be to "[s]ingle-family detached dwellings" and "[a]gricultural operations," which are "permitted uses" in residential districts, *see* Zoning Regulations § 5-4-2-1, R.99, Ex.2, but Vision fails to make this comparison. Vision also is not similarly situated to the two elementary schools operated by the Kildeer School District. In evaluating the requests for a special use permit, Vision and the schools both were subject to the inquiry mandated by § 5-11-6(D) of the Zoning Regulations, which examines whether the special use

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tional basis.

"is deemed necessary for the public convenience" and will "protect[]" "public health, safety and welfare." *Id.* § 5-11-6(D). In July 1999, this issue was the sole inquiry mandated by the Zoning Regulations, and the Village determined that the schools were appropriate special uses. When the Village considered Vision's application for a special use permit in May 2002,[25] however, these standards had changed slightly: To obtain a special use permit, Vision also needed to comply with the size and capacity restrictions imposed by the Assembly Ordinance, which had been passed by the Village Board the month prior. Because the prevailing standards for granting a special use permit in 1999 and in 2002 differed, we cannot find Vision to be similarly situated to the schools for the purpose of class of one analysis.

2. RLUIPA Equal Terms

"For purposes of a RLUIPA equal terms challenge, the standard for determining whether it is proper to compare a religious group to a nonreligious group is not whether one is 'similarly situated' to the other, as in our familiar equal protection jurisprudence." *Konikov v. Orange County, 410 F.3d 1317, 1324 (11th Cir. 2005).* Instead, the pertinent question is whether the "land use regulation. .. treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." *42 U.S.C. § 2000cc(b)(1).* Although this court has not yet had an opportunity to explore fully the contours of RLUIPA's equal terms provision, the Eleventh Circuit recently set forth comprehensively what it described as the

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[25] *See supra* note 24 (limiting the court's analysis to the rejection of Vision's 2002 special use application, and explaining that the Village never acted on Vision's earlier request for a special use permit because it lacked jurisdiction over Vision's property).

> three distinct kinds of Equal Terms statutory violations: (1) a statute that facially differentiates between religious and nonreligious assemblies or institutions; (2) a facially neutral statute that is nevertheless "gerrymandered" to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions; or (3) a truly neutral statute that is selectively enforced against religious, as opposed to nonreligious assemblies or institutions.

Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295, 1308 (11th Cir. 2006) (hereinafter "*Primera*").

With respect to *RLUIPA § 2(b)(1)*, Vision challenges only the special use permit requirements; it does not claim that the Assembly Ordinance also violates the statute. But the Zoning Regulations, particularly the section addressing special uses, does not "differentiate[] between religious and nonreligious assemblies or institutions." *Id.* Nor does the facially neutral ordinance nevertheless target religion through religious "gerrymander[ing]." *Id.* Lastly, we cannot find that the special use requirements were "selectively enforced" against Vision Church, such that Vision was treated less favorably than another, nonreligious institution. As explained above, the comparison between Vision and the restaurants and tearooms that are considered permitted uses in the business district is not persuasive. Further, although under *RLUIPA § 2(b)(1)* a plaintiff need not demonstrate disparate treatment between two institutions similarly situated in all relevant respects, as required under equal protection jurisdiction, the fact that Vision and the elementary schools were subject to different standards because of the year in which their special use applications were considered compels the conclusion that there was no unequal treat-

ment. *Cf. id. at 1310* ("[T]he School is simply not a valid comparator here because the rezoning process is an entirely different form of relief from obtaining a variance." (internal quotation marks omitted)).

E. State Law Supplemental Claims

Vision argues that, as a matter of state law, the Village arbitrarily and without reference to defensible standards rejected its 2002[26] application for a special use permit. We cannot accept this argument. Vision focuses in its brief on the special use standards set forth in § 5-11-6(D) of the Zoning Regulations. Specifically, Vision claims that it "satisfied all the criteria necessary for issuance of a [permit]," Appellant's Br. at 35; it also challenges the special use regulations as lacking "defensible standards," *id.* at 37 (internal quotation marks omitted). Even if this were true, however, Vision was not denied a special use permit on the ground that the church would "cause substantial injury" to neighboring properties or that it otherwise was not "necessary for the public convenience," or because it failed to meet another criteria set forth in the Zoning Regulations. Zoning Regulations § 5-11-6(D), R.99, Ex.2. Rather, the permit was denied because Vision had submitted plans for the construction of a 99,000-square foot facility, which is 44,000 square feet larger than that allowed under the Public Assembly Ordinance. We already have determined that this legislation is constitutional, and there is no evidence that its application to Vision was arbitrary or capricious.

Vision also claims that the district court erred in granting summary judgment to the Village on its state

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[26] As in the context of Vision's equal protection claims, we limit our consideration of Vision's claims to the Village's denial of Vision's application for a special use permit in May 2002. *See supra* notes 24-25.

law vested rights claim. The district court held that, even if Vision had fulfilled the elements of a vested rights claim, the proper course of action was to sue Lake County, not the Village; further, it found that Vision could not "establish that there was a probability of municipal approval to build a church complex on its property." R.157 at 27.

We understand why Vision has directed its claim at the Village rather than the County. Its argument proceeds as follows: It had a right, when it purchased the property, to construct a church under Lake County Zoning Code; it relied on this right in purchasing the property; upon involuntary annexation by the Village, *see 65 ILCS 5/7-1-13*, this right was taken away because the property no longer was subject to Lake County's zoning jurisdiction; therefore, the Village is required to allow Vision to "complete the construction and [to] use the premises for the purposes originally authorized." Appellant's Br. at 30 (internal quotation marks omitted).

Nevertheless, Vision has not established a valid vested rights claim under Illinois law. Illinois courts generally recognize that "there is no vested right in the continuation of a zoning classification. " *Furniture L.L.C. v. City of Chicago, 353 Ill. App. 3d 433, 818 N.E.2d 839, 843, 288 Ill. Dec. 904 (Ill. App. Ct. 2004)*. However, the Illinois Supreme Court has held:

> [W]here there has been a substantial change of position, expenditures or incurrence of obligations made in good faith by an innocent party under a building permit or in reliance upon the probability of its issuance, such party has a vested property right and he may complete the construction and use the premises for the purposes originally authorized, irrespective of subsequent zoning or a change in zoning classifications.

Pioneer Trust & Savings Bank v. Cook County, 71 Ill. 2d 510, 377 N.E.2d 21, 26, 17 Ill. Dec. 831 (Ill. 1978) (internal quotation marks omitted). As a result, Illinois courts have found that, where a plaintiff purchases and invests in property believing in good faith that it will receive a building permit, the city cannot amend zoning classifications to the builder's detriment, making unavailable the intended use of the land. *See, e.g., Furniture L.L.C., 818 N.E.2d at 846.*

However, there is no Illinois case law applying the vested rights doctrine under the present circumstances -- where a plaintiff has relied to its detriment on a county zoning ordinance, but sued *a different* government entity, the municipality, for the disruption of this expectation. As a federal court exercising supplemental jurisdiction over this claim, we must be reluctant "to expand state law" in this fashion. *J.S. Sweet Co. v. Sika Chem. Corp., 400 F.3d 1028, 1034 (7th Cir. 2005).*[27] n27 Moreover, to expand Illinois law to create a remedy in this case would render *65 ILCS 5/7-1-13* meaningless. Title *65 ILCS 5/7-1-13* sets forth the limited conditions under which involuntary annexation is permissible; because Vision's property is bordered on all sides by property within the Village's corporate boundaries, the Village was authorized to involuntarily annex the property under the terms of the statute. Under Vision's proposed rule, the Village -- and all other Illinois municipalities -- effectively would be stripped of the authority to annex *any* land that already is zoned for development under county zoning code, contrary to the obvious intent of the Illinois state legislature. *See also IDX Sys. Corp. v. Epic Sys. Corp., 285 F.3d 581, 586-87*

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[27] *Cf. Dausch v. Rykse, 52 F.3d 1425, 1438 (7th Cir. 1994)* (Ripple, J., concurring) ("[F]ederal courts sitting in diversity ought to be circumspect in expanding the law of a state beyond the boundaries established in the jurisprudence of the state.").

(7th Cir. 2002) (noting that "our task is to implement state law as state courts would implement it" and holding that, if we believe that state courts would find a "conflict" between the interpretation urged by the parties and a state statute, that interpretation must be invalidated). Because we believe that an Illinois state court would not interpret a common law doctrine in a manner that neutralizes the meaning of a state statute, we cannot adopt the interpretation of the vested rights doctrine advanced by Vision.

Conclusion

For the reasons set forth in the foregoing opinion, we affirm the judgment of the district court.

AFFIRMED

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 05-4144 & 05-4234

VISION CHURCH,
Plaintiff-Appellant,

v.

VILLAGE OF LONG GROVE,
Defendant-Appellee.

January 10, 2007, Decided

ORDER

Upon consideration of Appellants' petition for rehearing en banc, filed on November 21, 2006, no judge in active service has requested a vote thereon and the judges on the original panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing en banc is hereby DENIED.

APPENDIX D

106th CONGRESS

2d Session

AN ACT

To protect religious liberty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Religious Land Use and Institutionalized Persons Act of 2000'.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS-
(1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--
(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest.
(2) SCOPE OF APPLICATION- This subsection applies in any case in which--
(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;
(B) the substantial burden affects, or removal of that sub-

stantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or
(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION-
(1) EQUAL TERMS- No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
(2) NONDISCRIMINATION- No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.
(3) EXCLUSIONS AND LIMITS- No government shall impose or implement a land use regulation that--
(A) totally excludes religious assemblies from a jurisdiction; or
(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

***

APPENDIX E

LONG GROVE ZONING ORDINANCE
§ 5-11-17
SPECIAL USE PERMITS

***

(E) Standards for Special Use Permits.

1. General Standards. No special use permit shall be recommended or granted pursuant to this section unless the owner shall establish that:

(a) Is deemed necessary for the public convenience at that location;

(b) Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(c) Will not cause substantial injury to the value of other lots in the neighborhood in which it is located;

(d) Conforms to the applicable regulations of the district in which it is to be located, except as may be recommended by the plan commission and approved by the village board or, except in the case of a planned development; and

(e) Owner can demonstrate, to the satisfaction of the village, that it has the capability and capacity, including, without limitation, the technological, personnel, and financial resources, to complete the project as proposed.

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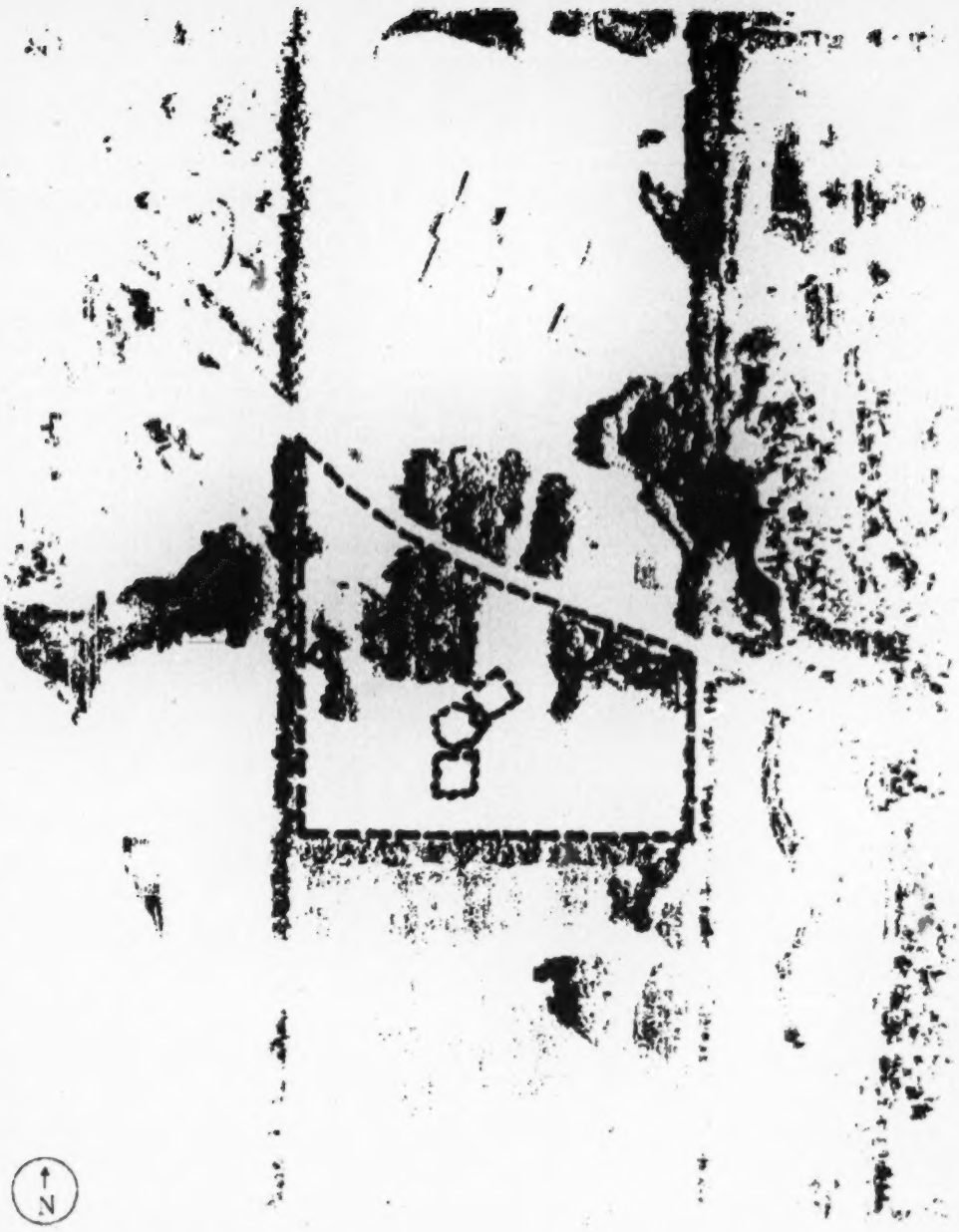
APPENDIX F

LONG GROVE ZONING ORDINANCE
§ 5-11-6.1

AN ORDINANCE
AMENDING THE VILLAGE CODE
REGARDING PUBLIC ASSEMBLIES

PUBLIC ASSEMBLIES: When and if permitted as a special use in the respective zoning district, public assembly uses, such as religious institutions, aquariums, libraries, museums, private schools, and other similar uses, shall confirm to, in addition to all other applicable Village Code provisions, the following:

	Neighborhood Facility	Community Facility	Regional Facility
		***	
Where Located	Front on any public street	Front on county or state highway	Front on state highway
Maximum Square Feet of Buildings	11,000	[1] building 35,000 [2] buildings 45,000 [3] buildings 55,000	[1] building 60,000 [2] buildings 80,000 [3] buildings 100,000
		***	



Aerial photo of Victor's property (Lot A to C) compounded with approximate location of proposed Church buildings and boundary lines depicted by solid-dash lines. The School Complex is seen across the Street

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